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Air Pollution Regulations in State Implementation Plans: South Dakota

Abcor Inc, Wilmington, MA Walden Div

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South Dakota

by

Walden Division of Abcor, Inc.
Wilmington, Massachusetts

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EPA Project Officer: Bob Schell

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Office of Air, Noise, and Radiation
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Publication No. EPA-450/3-78-091

INTRODUCTION

This document has been produced in compliance with Section 110(h)(1) of the Clean Air Act Amendments of 1977. The Federally enforceable regulations contained in the State Implementation Plans (SIPs) have been compiled for all 56 States and territories (with the exception of the Northern Mariana Islands). They consist of both the Federally approved State and/or local air quality regulations as indicated in the Federal Register and the Federally promulgated regulations for the State, as indicated in the Federal Register. Regulations which fall into one of the above categories as of January 1, 1978, have been incorporated. As mandated by Congress, this document will be updated annually. State and/or local air quality regulations which have not been Federally approved as of January 1, 1978, are not included here; omission of these regulations from this document in no way affects the ability of the respective Federal, State, or local agencies to enforce such regulations.

There have been recent changes in the Federal enforceability of parking management regulations and indirect source regulations. The October, 1977, appropriation bill for EPA prohibited Federal enforcement of parking management regulations in the absence of specific Federal authorizing legislation. Federally promulgated parking management regulations have, therefore, been suspended indefinitely. Pursuant to the 1977 Clean Air Act Amendments, indirect source regulations may not be required for the approval of a given SIP. Consequently, any State adopted indirect source regulations may be suspended or revoked; State adopted indirect source regulations contained in an applicable SIP are Federally enforceable. More importantly, EPA may only promulgate indirect source review regulations which are specific to Federally funded, operated, or owned facilities or projects. Therefore, the Federally promulgated indirect source regulations appearing in this document are not enforceable by EPA except as they relate to Federal facilities.

Since State air quality regulations vary widely in their organization, content, and language, a standardized subject index is utilized in this document. Index listings consist of both contaminant and activity oriented categories to facilitate usage. For example, for regulations which apply to copper smelters, one might look under sulfur compounds (50.2), particulate matter process weight (50.1.1), or copper smelters (51.15). Federal regulations pertaining to a given State immediately follow the approved State and local regulations.

Additionally, a summary sheet of the information included in each comprehensive document is presented prior to the regulatory text to allow one to quickly assess the contents of the document. Specifically, the summary sheets contain the date of submittal to EPA of each revision

to the SIP and the date of the Federal Register in which the revision was either approved or disapproved by EPA. Finally, a brief description or reference of the regulation which was submitted is also included.

This document is not intended to provide a tool for determining the enforceability of any given regulation. As stated above, it is intended to provide a comprehensive compilation of those regulations which are incorporated directly or by reference into Title 40, Part 52, of the Code of Federal Regulations. Consequently, the exclusion of a Federally approved regulation from this document does not diminish the enforceability of the regulation. Similarly, the inclusion of a given regulation (for example, regulations governing pollutants, such as odors, for which there is no national ambient air quality standards) in this document does not, in itself, render the regulation enforceable.

SUMMARY SHEET
OF
EPA-APPROVED REGULATION CHANGES
SOUTH DAKOTA

<u>Submittal Date</u>	<u>Approval Date</u>	<u>Description</u>
4/27/72	5/31/72	Reg. 1.8.4
5/2/72	7/27/72	Reg. 1.8.4
12/4/72	8/5/72	ALL NEW REGS. APPROVED: 34:10:01; 34:10:02; 34:10:03; 34:10:04; 34:10:05; 34:10:06; 34:10:07; 34:10:12.

FEDERAL REGULATIONS

<u>Section Number</u>	<u>Description</u>
52.2176	REGULATION FOR NEW OR MODIFIED INDIRECT SOURCES.
52.2176	REGULATION FOR PREVENTION OF SIGNIFICANT DETERIORATION.

DOCUMENTATION OF CURRENT EPA-APPROVED
STATE AIR POLLUTION REGULATIONS

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 - 51.3 CONSTRUCTION (includes Cement Plants, Materials Handling, Topics Related to Construction Industry)
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ARTICLE 34:10
AIR POLLUTION CONTROL

CHAPTER 34:10:01
GENERAL REQUIREMENTS AND PROCEDURES

- (1.0) 34:10:01:01. Definitions. Terms as used in this article, unless the context otherwise require, mean:
- (1) "Act," Chapter 34-16A of South Dakota Compiled Laws;
 - (2) "Air pollutant," an air contaminant as defined by 34-16A-2(1) of the act;
 - (3) "Ambient air," that portion of the atmosphere, external to buildings, to which the general public has access;
 - (4) "Ambient air quality standards," standards established with an adequate margin of safety to protect the public health and welfare from known or anticipated adverse effects of a pollutant;
 - (5) "ASTM," the American Society for Testing and Materials¹;
 - (6) "Board," the South Dakota board of environmental protection;
 - (7) "Chairman," chairman of the board;
 - (8) "Control equipment," any device or contrivance which prevents or reduces emissions;
 - (9) "Department," the South Dakota department of environmental protection;
 - (10) "Equivalent method," any methods of sampling and analysis for an air pollutant which have been demonstrated to the department's satisfaction to have a consistent and quantitatively known relationship to the reference method under specified conditions;
 - (11) "Existing source," any source other than a new source;
 - (12) "Fuel burning equipment," any furnace, boiler, apparatus, stack, or appurtenances thereto used in the process of burning fuel or other combustible material for the primary purposes of producing heat or power by indirect heat transfer;
 - (13) "Fugitive dust," solid airborne particulate matter emitted from any source other than through a stack;
 - (14) "Garbage," putrescible animal and vegetable wastes resulting from the handling, preparation, cooking and consumption of food, including wastes from markets, storage facilities, handling and sale of produce and other food products;

- (15) "Heat input," the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value to be used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater;
- (16) "Incinerator," any furnace used in the process of burning solid waste for the purpose of reducing the volume of the waste by removing combustible material;
- (17) "Installation," any property, real or personal, including but not limited to processing equipment, manufacturing equipment, fuel-burning equipment, incinerators, or any other equipment, facility or construction, which is likely to create or cause emissions;
- (18) "Modification," any physical change in, or change in the method of operation of, any source which increases the amount of air pollutant (to which a standard applies) emitted by such source which results in the emission of any air pollutant (to which a standard applies), not previously emitted, except that routine maintenance, repair and replacement at the source, or installation of air pollution control devices or methods shall be considered physical changes, nor shall an increase in the production rate, if such increase does not exceed operating design capacity of the source, nor shall the use of an alternative fuel or raw material if, prior to the date the standard under this article becomes applicable to such source, the source is designed to accommodate such alternative use;
- (19) "Multiple chamber incinerator," any article, machine, equipment, contrivance, structure, or part of a structure used to dispose of combustible refuse by burning, consisting of three or more refractory lined combustion furnaces in series physically separated by refractory walls, interconnected by gas passage ports or ducts, and employing adequate parameters necessary for maximum combustion of the materials to be burned;
- (20) "New source," a source which is subject to the provisions of Chapter 34:10:12;
- (21) "Opacity," the degree to which emissions reduce the transmission of a light source;
- (22) "Open burning," the burning of any matter in such a manner that the products of combustion resulting from the burning are emitted directly into the ambient air without passage through stack, duct, or chimney;
- (23) "Organized disposal system," any available system of collection or disposal of solid waste offered under county, municipal, or any other public solid waste management system or required under local ordinance;

- (24) "Particulate matter," any material, except water in uncombined form, that is or has been airborne and exists as a liquid or a solid at standard conditions;
- (25) "Permit," a license for the construction or operation of a source in compliance with the act which has been granted by the board;
- (26) "Person," any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision or state agency or any legal successor, representative, agent, or agency of the foregoing;
- (27) "Premises," a piece of land, real estate, or building where a source is located;
- (28) "Process weight," the total weight of all materials introduced into any specific emitting process which may cause emissions. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not;
- (29) "Process weight rate," the rate established as follows:
 - (a) For continuous or long-run steady-state operations, the total process weight for the entire period of continuous operation, or for a typical portion thereof, divided by the number of hours of such period or portion thereof; or
 - (b) For cyclical or batch operation, the total process weight for a period that covers a complete operation or an integral number of cycles, divided by the hours of actual process operation during such a period.

Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this definition, the interpretation that results in the minimum value for allowable emission shall apply;

- (30) "Ringelmann chart," the chart published and described in the United States Bureau of Mines Information Circular 8333²;
- (31) "Rubbish," nonputrescible solid wastes consisting of both combustible and noncombustible wastes. Combustible rubbish includes paper, rags, cartons, wood, furniture, rubber, plastics, yard trimmings, leaves, and similar materials. Noncombustible rubbish includes glass, crockery, cans, dust, metal, furniture and like materials which will not burn in an incinerator capable of reaching temperatures of 1,600°F to 1,800°F;
- (32) "Salvage operation," any operation conducted in whole or in part for the salvaging or reclaiming of produce or material;

- (33) "Secretary," the secretary of the South Dakota department of environmental protection;
- (34) "Smoke," small gasborne particles resulting from incomplete combustion, consisting predominantly, but not exclusively, of carbon, ash and other combustible material, that form a visible plume in the air;
- (35) "Soiling index," a measure of the soiling properties of suspended particles in air determined by drawing a measured volume of air through a known area of Whatman number four filter paper for a measured period of time, expressed as Coefficient of Haze (COH)/1000 linear feet, or equivalent;
- (36) "Source," any property, real or personal, which emits or is likely to emit any air pollutant from a stack for which standards exist under these rules;
- (37) "Variance," a license to operate a source that is not in compliance with certain portions of the act.

Note 1 Methods or specifications referenced to in this article are available by writing, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania, as published, October 28, 1971, at a cost of \$1.75 each.

2 Ringelmann Smoke Chart, Bureau of Mines Information Circular 8333 is available at the U.S. Bureau of Mines, Technical Publications Section, 4800 Forbes Avenue, Pittsburgh, Pennsylvania 15213, at no cost.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-12.

34:10:01:02. Repealed.

- (2.0) 34:10:01:03. Circumvention. No person shall install or cause the installation or use of any device or any means which, without reducing the total amount of air pollutants emitted, conceals or dilutes an emission of air pollutants which would otherwise violate applicable rules under the act.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (3.0) 34:10:01:03.01. Construction permit required to install proposed source. No person shall construct, install, or modify any equipment or device likely to cause the emission of air pollutants into the ambient air, or any control apparatus which prevents or controls the emission of air pollutants into the ambient air until a construction permit has been issued.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27.

34:10:01:04. Repealed.

(3.0) 34:10:01:04.01. Application for construction permit. Any person desiring to obtain a construction permit for a proposed source shall submit a signed application in a form prescribed by the department. Such form shall include provisions for the following information:

- (1) Name and mailing address of the person for which an application is made;
- (2) The address of the source to be constructed; installed or modified;
- (3) Nature of the process or activity associated with the proposed source;
- (4) The projected amount and kind of material that may affect the amount or quality of emissions from the proposed source;
- (5) Expected composition of the effluent stream, including the emission rate, concentration, volume and temperature, both with and without any proposed pollution control devices installed, unless any such information is clearly not applicable to review purposes;
- (6) Expected physical characteristics of particulate matter which would likely be emitted both with and without installed pollution control devices;
- (7) A description of the type of source associated equipment other than pollution control equipment, which may significantly affect the amount or kind of pollutants produced by the source, and such description shall include the name of the manufacturer of the equipment, the equipment age, the model, and a description of the equipment operating principles;
- (8) A description of any air pollution control equipment planned for the proposed source; including an explanation of its operational principles, the name of the manufacturer and model, the design or rated efficiency of the device, and the age of the equipment;
- (9) If the pollution control system on a source includes a wet scrubber, the flow rate of water used by the scrubber, the type of treatment for the water used by the wet scrubber, a statement of whether water used is to be recycled, the proposed detention time in any settling ponds, and the location of any discharge from the premises;
- (10) Type and amounts of fuel to be used in source operation which may affect emissions;

- (11) Two copies of any prepared plans and specifications of any equipment or other facilities which may affect the source, including pollution control devices;
- (12) Location and elevation of the emission point and other factors relating to dispersion and diffusion of pollutants in the ambient air, and the relation of the emission point to nearby structures, window openings, and other information necessary to appraise the immediate effect of emitted pollutants;
- (13) A preplanned abatement strategies plan, if required by 34:10:02:32, and
- (14) Any other information requested within forty-five days by the department which is relevant to ascertaining source compliance with the act.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19 and 34-16A-27.

Commission Note: The substance of this section has been transferred from 34:10:01:04.

34:10:01:05. Repealed.
 34:10:01:06. Repealed.
 34:10:01:07. Repealed.

- (3.0) 34:10:01:08. Plans and specifications to be prepared by competent persons. Plans and specifications which do not fall under the exceptions listed in SDCL 34-18-7 shall be prepared by or under the direction of a person properly qualified under the South Dakota Laws pertaining to the registration and certification of engineers, architects and land surveyors. The proper seal of registration shall be imprinted on all such plans and specifications.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-26 and 34-16A-27.

- (3.0) 34:10:01:08.01. Time period for department recommendations on an application. The department shall make a decision to recommend issuance or denial of a construction permit to an applicant within forty-five days after submission of a completed application and all other additional information necessary for the department to make an informed decision. Failure of the department to make a decision on an application shall entitle the applicant to petition and obtain a contested case on the application without waiting for a department recommendation.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27.

Commission Note: The substance of this section has been transferred from 34:10:01:11.

- (3.0) 34:10:01:08.02. Standard for issuance of a construction permit. A construction permit shall be issued only when it has been shown that the operation of the new source will not prevent or interfere with attainment or maintenance of any applicable ambient air quality standard and the source will comply with emission limitations and other requirements of the act. Such permit shall include reasonable conditions, including adherence to plans and specifications, to assure compliance with the act and any other conditions justified under SDCL 34-16A-26.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27.

- (3.0) 34:10:01:08.03. Procedures for a decision on construction permit applications. The procedures set forth in sections 34:10:01:22.02 to 34:10:01:22.10, inclusive, shall apply to the decision making process for issuance or denial of a construction permit.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27.

34:10:01:09. Repealed.

- (3.0) 34:10:01:09.01. Construction permit does not exempt owner from other requirements of the act. The issuance of a construction permit to the operator or owner of a new source shall not affect his responsibility to obtain an operational permit for the source and to comply with applicable emission limitations or other requirements under the act.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27.

Commission Note: The substance of this section has been transferred from 34:10:01:04.

- (3.0) 34:10:01:10. Disposition of approved plans and specifications. One complete set of any plans and specifications, submitted pursuant to 34:10:01:04.01 subdivisions (11) or (14), shall become the property of the department, and one complete set shall be returned as directed by the applicant or his representative after a final decision has been made on his application for a permit. Such sets shall have endorsed upon them the approval or disapproval of the secretary, or his designated representative. If additional approved sets are desired by the applicant, the desired number shall be submitted to the department for approval and return.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27.

34:10:01:11. Repealed.

34:10:01:12. Repealed.

34:10:01:13. Repealed.

- (3.0) 34:10:01:13.01. Construction permit expires after two years if construction is not started. A construction permit shall expire two years after date of issuance if construction is not commenced prior to that time. A new construction permit must be obtained by the same process as the initial permit if construction is to begin after expiration of the original or existing permit.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27.

34:10:01:14. Repealed.

- (3.0) 34:10:01:14.01. Notification when construction begins. The department shall be notified in writing when construction or installation of a new source shall begin.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19 and 34-16A-27.

Commission Note: The substance of this section has been transferred from 34:10:01:14.

- (3.0) 34:10:01:14.02. Construction permit amendment required to change plans and specifications. No person shall cause deviation from the plans and specifications approved in a construction permit which may cause a significant change in the nature, concentration, or amount of air pollutants emitted by the source, unless an amendment to the construction permit has been obtained. An amendment to the permit shall be obtained in the same manner as the original permit.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27.

Commission Note: The substance of this section has been transferred from 34:10:01:12.

34:10:01:15. Repealed.

- (2.0) 34:10:01:16. Exemptions. The following installations are exempted from the requirements of 34:10:01:03.01 to 34:10:01:14.02, inclusive:

- (1) Incinerators of less than one hundred pounds per hour burning capacity;
- (2) Any mobile sources except asphalt or cement batch plants; and
- (3) All sources not required to obtain an operational permit under the act's requirements.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27.

34:10:01:17. Repealed.

- (3.0) 34:10:01:18. Operational permit required to operate a source. No owner or operator of a source shall operate or cause the operation of a source unless excepted, or unless a permit or variance has been obtained, and then the source shall only be operated in accordance with such permit or variance.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-26.

34:10:01:19. Repealed.

- (3.0) 34:10:01:19.01. Application for an operational permit. Any person desiring to obtain an operational permit for a source shall submit a signed application in a form prescribed by the department. The form shall include:

- (1) In the case of an existing source, provisions for information as required by 34:10:01:04.01 except subdivision (11), the results and dates of any stack sampling conducted at the source, and, where required, a preplanned abatement strategy under 34:10:02:32;
- (2) In the case of a new source, provisions for the information as required by 34:10:01:04.01 (1) to (4) inclusive, the date and results of any stack sampling where required, a preplanned abatement strategy under 34:10:02:32, and a reference to any construction permit issued to the source.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19 and 34-16A-27.

34:10:01:20. Repealed.

34:10:01:21. Repealed.

- (3.0) 34:10:01:21.01. Conditions for obtaining a permit. An applicant for a permit to operate an existing source shall demonstrate that it is and will be in compliance with the act and applicable rules. An applicant for a permit to operate a new source shall demonstrate that it will be in compliance with the act and applicable rules.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27.

Commission Note: The substance of this section has been transferred from 34:10:01:21.

- (5.0) 34:10:01:21.02. Application for a variance. Any person desiring to obtain a variance to operate a source in noncompliance with certain provisions of the act and regulations shall submit an application in a form prescribed by the department. Such form shall include the same provisions as required by 34:10:01:04.01 except subdivision (11); the date and results of any stack sampling at the source; the requirements and time periods for which a variance is requested; and facts relevant to establishing the burden of proof required under 34:10:01:21.03.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19, 34-16A-27, and 34-16A-30.

- (5.0) 34:10:01:21.03. Conditions for obtaining a variance. An applicant for a variance shall establish that the source's noncompliance with provisions of the act and applicable regulations can be justified pursuant to SDCL 34-16A-35, and the applicant shall establish that the source will be maintained in compliance with any variance which may be granted pursuant to SDCL 34-16A-35. The above stated requirements shall constitute a minimum showing for obtaining a variance, but they shall in no way be construed as restricting the discretionary power of the board to deny a variance to an applicant when other equitable considerations merit denial.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19, 34-16A-27, 34-16A-30, 34-16A-34, and 34-16A-35.

- (3.0) 34:10:01:21.04. Time period for which a permit is issued and applications for renewal. An initial permit shall be for a period of one to three years and all subsequent permits shall be for a period of three years. An application for renewal of a permit or variance may provide the information required under 34:10:01:19.01 by reference to an application form for a previous permit if appropriate.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27 and 34-16A-30.

- (5.0) 34:10:01:21.05. Time limit on renewal of variances. Application for renewal of a variance shall be made two months prior to the expiration date of a previously granted variance, and in the same manner as the original variance.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-30, and 24-16A-39.

- (3.0) 34:10:01:21.06. Time period for recommendation of department on operational permit or variance. The department shall make a recommendation for issuance or denial of an application for an operational permit or variance subject to the same periods and procedures as set out in 34:10:01:08.01 for construction permits.
- (5.0)

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-34, and 34-16A-35.

34:10:01:22. Repealed.

- (3.0) 34:10:01:22.01. Operation of new source for testing purposes prior to issuance of permit. Any new source regardless of whether it is subject to Chapter 34:10:12 or not, which has filed an application for an operation permit shall be allowed to operate the source for up to sixty days for purposes

of shakedown and testing of air pollution control devices before a permit is required. The department shall be notified of any tests or shakedown runs or series of them ahead of time. Any information acquired which is relevant to the decision on a permit shall be submitted to the department, to supplement the application for a permit. Where necessary to ascertain compliance of the source, an applicant may request an extension, in writing, from the chairman, and the chairman may grant a reasonable extension for testing purposes, where the request is justified, after opportunity for the department to respond in writing.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19 and 34-16A-27.

- (3.0) 34:10:01:22.02. Department to make a recommendation on permit or variance applications and issue a proposed permit. The department, after review of the application and any other information available to it, shall make a written recommendation to the board, including the reasons upon which it is based, as to whether a permit or variance should be issued or denied. A decision to recommend to the board that a permit or variance should be granted, should include a proposed permit or variance with appropriate conditions in it to assure compliance with the act.
- (5.0)

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-34 and 34-16A-35.

- (2.0) 34:10:01:22.03. Notice of a department recommendation. The department shall mail a copy of its recommendation on a permit or variance application to the applicant and board members along with a copy of the newspaper notice to be published pursuant to this section. The department shall have a notice of its recommendation published once in a legal newspaper within the county where the source is located. The notice shall include a brief statement describing the nature of, and the reasons for the recommendation, a statement that a person must petition the board by a certain date (which is not to be less than thirty days nor greater than forty days from publication of the notice) in order to contest the recommendation, and a statement describing where copies of the recommendation or other information may be obtained.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27 34-16A-35 and 1-26-27.

- (2.0) 34:10:01:22.04. Recommendation to become board's decision unless a person petitions to contest it or two board members request review. The recommendation of the department will become the final decision of the board and any proposed permit or renewal of a variance will be considered as a permit or variance

approved by the board unless a petition disputing this recommendation, or a request for a contested case hearing by two board members has been received no later than the date stated in the notice under 34:10:01:22.03.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-35, 34-16A-39, 1-26-27, and 1-26-29.

- (3.0) 34:10:01:22.05. The applicant or interested person may petition the board for contested case hearing on the department recommendation.
(16.0) The applicant may petition the board for, and obtain, a contested case hearing if he desires to dispute the department's recommendation, and any other person may petition to intervene and request a hearing if he has an interest affected by the department's recommendation. A petition to intervene shall be granted if it disputes the department's recommendation, or another person's petition for a hearing is granted, and the petition meets the requirements of 34:10:01:45. No person shall be allowed to intervene in proceedings of an application at a later date who fails to petition within the time stated in the notice under 34:10:01:22.03. The chairman shall review all petitions, and he shall grant intervention to qualified intervenors.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-35, 34-16A-39, 1-26-27, and 1-26-29.

- (2.0) 34:10:01:22.06. Initiation of a contested case when the department recommendation is contested.
(16.0) The chairman, if he grants a petition under 34:10:01:22.05, shall order and set a time and place for a contested case hearing after the time for contesting the department's recommendation has expired and he has acted on all petitions. No further pleadings shall be filed unless the chairman determines that they would clarify and expedite the proceedings. Notice of the hearings shall be mailed to all the parties at least fifteen days prior to the hearing, unless otherwise agreed by all the parties, but notice need not be published in a newspaper.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-35, 1-26-16 and 1-26-18.

- (2.0) 34:10:01:22.07. Department initiation of contested case without waiting for another person to initiate a hearing.
(16.0) The department may initiate a contested case hearing concerning a permit or variance application by filing a petition with the board,

in lieu of issuing notice under 34:10:01:22.03 and awaiting a person to contest its recommendation under 34:10:01:22.04 and 34:10:01:22.05. The petition shall contain the department's recommendation on the application and reasons for it. The department shall initiate a contested case whenever it recommends issuance of a variance, except renewals where no complaint has been made to the department concerning the source. The applicant shall file an answer, and any person desiring to intervene shall petition to intervene within fifteen days after publication of notice under 34:10:01:22.08.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-35, 34-16A-39, 1-26-27, and 1-26-29.

- (2.0) 34:10:01:22.08. Issuance of notice when a contested case is initiated by the
(16.0) department. The chairman shall establish a time, place and date for a contested case hearing after the department has filed a petition for such a hearing on a variance or permit application. The order shall allow the secretary time to provide the notice required by this section. The secretary shall mail a copy of the petition and order to the applicant and board members along with a copy of the newspaper notice required by this section. The secretary shall publish notice of the hearing in a legal newspaper at least twenty days prior to the hearing. The notice shall include a brief statement of nature, time and place of the hearing, the position asserted by the department, the time limitation for intervention, and where copies of the department's petition and order may be obtained.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-35, 1-26-16, 1-26-17, and 1-26-18.

- (2.0) 34:10:01:22.09. Board authority to review on own initiative. Whenever two or more board members request a review of a permit or variance renewal application for which the department has recommended approval, notice of a contested case hearing shall be issued to the applicant after the time period in which a person is to petition under 34:10:01:22.03 and the applicant and department shall present their case(s) to the board at the hearing.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27 and 34-16A-34.

- (3.0) 34:10:01:22.10. Content of a permit. A permit or variance shall be signed by the chairman and shall include:

- (1) Name of the person, company, political subdivision, agency or institution granted a permit or variance;

- (2) Type of operation;
- (3) Plant and mailing address;
- (4) Date permit was granted and on which it will expire;
- (5) A number for administrative reference;
- (6) A designated person or officer responsible for the source's operation; and
- (7) A statement granting a permit or variance by the board, and any reasonable conditions that the board may impose to insure compliance with the act.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27 and 34-16A-35.

34:10:01:23. Repealed.

34:10:01:24. Repealed.

34:10:01:25. Repealed.

34:10:01:26. Repealed.

34:10:01:27. Repealed.

34:10:01:28. Repealed.

(3.0) 34:10:01:28.01 Exemptions from operational permits. A permit or a variance for the operation of a source shall be required for all sources except when the source is:

- (1) A mobile internal combustion engine, including but not limited to autos, trucks, tractors, airplanes, locomotives and boats;
- (2) Laboratory equipment used exclusively for chemical or physical analysis;
- (3) A device or apparatus fueled by natural gas which is used exclusively for space heating;
- (4) Any device or apparatus which has a heat input capability of not more than three million, five hundred thousand BTU per hour;
- (5) An air conditioning or ventilating system not designed to remove air pollutants from equipment;
- (6) A diesel powered emergency electrical generator;

(7) Any other sources constructed for domestic purposes and not intended for use by an industry, manufacturer, business or the general public; and

(8) Incinerators with a rated burning capacity of one hundred pounds per hour or less.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27.

34:10:01:29. Repealed.

34:10:01:30. Repealed.

34:10:01:31. Repealed.

34:10:01:32. Repealed.

34:10:01:33. Repealed.

34:10:01:34. Repealed.

34:10:01:35. Repealed.

34:10:01:36. Repealed.

34:10:01:37. Repealed.

(3.0) 34:10:01:38. Right to intermediate appeal to the board. A permit or variance
(5.0) applicant adversely affected by a decision of the department or board chairman, prior to issuance of the department recommendation, in the permit or variance application process, or any other person adversely affected by a department decision under the act, shall have the right to be heard by the board if that person petitions the board for a contested case hearing within fifteen days after notification of that decision. The board shall hold such hearing and either affirm, reverse or modify the decision appealed from.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-29, and 34-16A-35.

(15.0) 34:10:01:39. Notice of non-compliance - Content. If the department determines
(3.0) that the operation of any source is not in compliance with rules or statutory requirements, the department shall issue a notice of such findings to the permit holder or operator of the source, and the notice shall contain citations to the rules or statutes violated, reference to this section, and alleged facts upon which the determination is based. The department shall offer the alleged violator an opportunity for a conference or consultation within thirty days. Subsequent to such a conference, the secretary, with the concurrence of the alleged violator, may issue an agreed order which sets out the date for final compliance of the source, and increments of progress to be met in achieving this compliance. Agreed orders issued under this section must

be submitted to the board for approval.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-49, 34-16A-53, 34-16A-61, and 1-26-20.

- (15.0) 34:10:01:40. Petition for contested case on an alleged violation. In lieu
(16.0) of, or after issuance of a notice of violation under 34:10:01:39, the department may file a petition with the chairman which shall contain the information required under SDCL 34-16A-52 and 34:10:01:43. The petition shall contain either a request for an order directing appropriate corrective action or that a contested case hearing be scheduled and an alleged violator be ordered to show cause why corrective action should not be required.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-53, and 34-16A-55.

- (2.0) 34:10:01:41. Issuance of an order and notice when the chairman has reason to
(15.0) believe a violation has occurred. The chairman shall either issue an order for corrective action which contains a statement that such order shall become final unless the alleged violator requests a hearing no later than fifteen days after receipt of the order, or he shall commence a contested case on the alleged violation and issue an order to show cause why corrective action should not be ordered at that time, when he has reason to believe that a violation has occurred from a reading of the department's petition for enforcement action. Any request for a contested case hearing by the alleged violator shall fairly answer the allegations set out in the department's petition, as required by 34:10:01:44. A copy of the department's petition and the chairman's order shall be sent to the alleged violator.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-49, 34-16A-53 to 34-16A-55, inclusive.

- (15.0) 34:10:01:42. Intervention in enforcement hearings if not allowed. No person
(16.0) may intervene in a contested case hearing which is an enforcement action against an alleged violator and a newspaper notice need not be published.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-49, 34-16A-53 to 34-16A-55, inclusive.

- (16.0) 34:10:01:43. Petition to initiate a contested case. In order for the department or any interested person to initiate a contested case proceeding, a written petition shall be filed with the secretary. Such petition shall request a hearing before the board and contain a statement of the petitioner's interest in the case, a statement of the relief and decision requested of the board,

a statement alleging relevant facts and issues known to the petitioner upon which he bases his request of the board, statement of the legal authority and jurisdiction under which the hearing would be held, a reference to the particular statutes and rules involved, and the signature of the petitioner or the petitioner's attorney or any other person who will represent the petitioner before the board and his address. The signature on a petition, or any other pleading, shall constitute a certificate by the signor that he has read the petition or pleading, that to the best of his knowledge, information, and belief that there are good grounds to support it and it is not filed for purposes of delay.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-35, 34-16A-50, 34-16A-53 to 34-16A-55, inclusive, 1-26-27 1-26-29.

- (16.0) 34:10:01:44. Answer to petition for a contested case. Within fifteen days after receipt of a petition and notice for a contested case, other parties shall mail a written answer to the secretary, and to any other parties, fairly answering the allegations in the petition, asserting any other relevant factors supporting its position and the desired decision of the board. An extension of this time period may be granted after submission of a written request to the board chairman showing good cause and after opportunity for other parties to make written response. A decision whether to extend the time period shall be at the discretion of the chairman and such decision shall not be appealable to the board. Failure to answer an allegation in a petition shall constitute an admission of that fact. Further pleadings by parties in response to an answer shall not be made unless the chairman orders them for purposes of clarification of the issues involved in the contested case and no admissions shall be construed from lack of such response.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-35, 34-16A-50, 34-16A-53 to 34-16A-55, inclusive, 1-26-27 and 1-26-29.

- (16.0) 34:10:01:45 Petition to intervene in a contested case proceedings. Any person who desires to intervene in a contested case proceeding on a permit or variance application shall file a petition that substantially conforms with the requirements of SDCL 21-10A-2 and sections 34:10:01:43 or 34:10:01:44, and includes a statement of whether the petitioner desires to support or contest the department's petition, or department recommendation on a permit or variance application, filed with the board. A petition to intervene shall be granted and the intervenor allowed to participate when his interest may not be adequately represented by other parties. A petition to intervene shall be mailed to the secretary, board members and other parties of record. Pleadings in response to

an intervenor's petition shall not be made unless the chairman on his own motion orders such for the purpose of clarification of issues involved in the contested case. Unless a response is allowed no inferences shall be drawn from lack of response to an intervenor's petition.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-35, 34-16A-50, 34-16A-53 to 34-16A-55, inclusive, 1-26-27 and 1-26-29.

- (3.0) 34:10:01:46. Pleadings to be filed with the secretary, and copies mailed to
(5.0) the hearing officer and parties. The original of any petition,
(16.0) motion or other pleading shall be filed with the secretary, and he shall establish and maintain a file or depository for it, all notices, petitions, pleadings, evidence, transcripts, or other materials received in a contested case. Copies of any such pleadings shall be mailed to the board members or hearing officer, where applicable, and other parties of record by the pleader. The department, the applicant for any permit or variance, an intervenor and any person issued an enforcement order or order to show cause shall be considered a party.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 1-26-21 and 1-26-22.

- (16.0) 34:10:01:47. Secretary to issue notice of a contested case. The secretary
(2.0) shall prepare a notice, which is in compliance with SDCL 1-26-17 and mail it to parties of record. The mailing to the parties of any petitions for a contested case and the order setting the hearing shall be sufficient notice in lieu of notice by the secretary, if they contain the statements required by SDCL 1-26-17. The secretary shall certify to the fact and means of publication and place the notice and certification in the case file.

General Authority SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-35, 34-16A-50, 34-16A-53 to 34-16A-55, inclusive, 1-26-27 and 1-26-29.

- (15.0) 34:10:01:48. Amendment of pleadings - Additional time. The chairman may
(16.0) issue appropriate orders to allow a party to amend its pleadings or extend the time period for submission of pleadings when no substantial injury to any parties is shown and such extension would likely serve the public interest and assist in a fair and equitable decision on the issue in controversy. Such order shall be given only after submission of a written request and opportunity for other parties to respond in writing.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-35, 34-16A-50, 34-16A-53 to 34-16A-55, inclusive, 1-26-27 and 1-26-29.

- (15.0) 34:10:01:49. Subpoenas. The chairman shall issue any subpoena necessary
(16.0) for obtaining information under SDCL 1-26-19.1. Any party
wishing to obtain a subpoena shall submit a written request
and a proposed subpoena to the chairman. Motions under 15-6-
45(b) shall be made to the chairman.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-48
and 1-26-19.1.

- (15.0) 34:10:01:50. Means and proof of service. Service of any pleadings, notices
(16.0) or orders may be by means of certified or registered mail, or
personal service. An affidavit of mailing or service, copies
of the receipts for delivery of registered or certified mail,
an admission of service or other competent evidence shall suf-
fice as proof of service.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-48
and 1-26-19.1.

- (2.0) 34:10:01:51. Board or chairman may appoint a hearing officer. The board
(15.0) in its discretion may appoint or hire a hearing officer to
preside over any contested cases. The hearing officer shall
have the authority to make all rulings, decisions and orders
which the board chairman or board may make in a contested case
proceedings. A hearing officer's decision shall be the final
administrative decision. The board chairman may appoint a
hearing officer to decide on motions and requests to be heard
by the chairman under these rules.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27,
34-16A-35, 34-16A-50, 34-16A-53
to 55, inclusive, 1-26-27 and
1-26-29.

- (2.0) 34:10:01:52. Burden of proof. Whenever, under this chapter or the act,
(15.0) any person is required to find, demonstrate, show or otherwise
establish any fact, such fact must be so established by a
preponderance of the evidence.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27,
34-16A-35, 34-16A-50, 34-16A-53
to 55, inclusive, 1-26-27 and
1-26-29.

- (2.0) 34:10:01:53. Decisions of the board and orders issued by the chairman.
(15.0) A final decision in a contested case shall be that obtained
by a majority vote from a quorum of the board unless a hearing
officer heard the case. Any final decision and resulting orders
shall be signed by the chairman. The chairman shall have the
authority to issue any orders during the course of proceedings
described in this chapter which will fairly implement and
expedite the mandates of this chapter and the act.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-49, 34-16A-53, 34-16A-55 to 34-16A-58.1, inclusive, and 1-26-25.

34:10:01:54. Proposed findings. The board, at its discretion, may allow or order parties to submit proposed findings of facts or law.

General Authority SDCL 34-16A-12. Law Implemented: SDCL 1-26-25.

(15.0) 34:10:01:55. Enforcement action and permit or variance proceedings may be
(5.0) conducted in same hearing. The department may initiate a contested case hearing on permit or variance application and bring an enforcement action against the applicant at the same time. The chairman may order a consolidated hearing on the two actions, but intervenors shall be allowed in the same manner as if the department had only initiated a hearing on the permit or license and sufficient notice shall be allowed for such intervenors.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-27, 34-16A-49, 34-16A-53, 34-16A-55, 1-26-18, 1-26-19, and 21-10A-2.

CHAPTER 34:10:02

AMBIENT AIR QUALITY STANDARDS
AND POLLUTION EPISODE CRITERIA

- (2.0) 34:10:02:01. Air quality guidelines. The goals of the standards established under this chapter are that air quality shall be such that it will not cause or tend to cause:

- (4.0)
- (1) The health of even sensitive or susceptible segments of the population to be adversely affected;
 - (2) Damage to buildings, property, animals, plants, forests, and agricultural crops to occur;
 - (3) Visibility to be significantly reduced;
 - (4) Metals or other materials to be significantly corroded or damaged;
 - (5) Natural scenery to be obscured; or
 - (6) Interference with enjoyment of life or property.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (4.0) 34:10:02:02. Ambient air quality standards. The ambient air quality standards listed in 34:10:02:03 to 34:10:02:09 inclusive, define the limits of air pollution by particulates and gases, above which limits the ambient air is unacceptable. These standards apply to the entire state of South Dakota, and no person shall cause these standards to be exceeded. The limits stated include normal background levels of particulates and gases.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (4.2) 34:10:02:03. Sulfur oxide standards. Sulfur oxides shall not exceed eighty micrograms per cubic meter of air as an annual arithmetic mean, nor shall sulfur oxides exceed more than once a year three hundred sixty five micrograms per cubic meter of air as a maximum twenty-four hour concentration or thirteen hundred micrograms per cubic meter of air as a maximum three hour concentration more than once per year.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (4.1) 34:10:02:04. Total suspended particulates standards. Total suspended particulates shall not exceed sixty micrograms per cubic meter of air as an annual geometric mean, nor one hundred fifty micrograms per cubic meter of air as a maximum twenty-four hour concentration to be exceeded not more than once a year.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

34:10:02:05. Repealed.

- (4.5) 34:10:02:06. Carbon monoxide standards. Carbon monoxide shall not exceed ten milligrams per cubic meter of air as a maximum eight hour concentration to be exceeded not more than once a year, nor forty milligrams per cubic meter of air as a maximum one hour concentration to be exceeded not more than once a year.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (4.6) 34:10:02:07. Photochemical oxidant standards. Photochemical oxidants shall not exceed one hundred sixty micrograms per cubic meter of air as a maximum one hour concentration to be exceeded not more than once a year.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (4.4) 34:10:02:08. Hydrocarbon standards. Hydrocarbons shall not exceed one hundred sixty micrograms per cubic meter of air as a maximum concentration in three consecutive hours, to be exceeded not more than once a year.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (4.3) 34:10:02:09. Nitrogen oxide standards. Nitrogen oxides shall not exceed one hundred micrograms per cubic meter of air on an annual arithmetic mean, nor two hundred fifty micrograms per cubic meter of air as a maximum twenty-four hour concentration to be exceeded not more than once a year.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

34:10:02:10. Repealed.

- (9.0) 34:10:02:11. Methods of sampling and analysis. Air pollutants shall be measured by the methods shown in 34:10:02:12 to 34:10:02:08 inclusive, or an equivalent method.

General Authority: SDCL 34-16A-12. Law Implemented SDCL: 34-16A-22.

- (9.0) 34:10:02:12. Method for sulfur dioxide measurements. Sulfur dioxide shall be measured in accordance with the method described in National Primary and Secondary Ambient Air Quality Standards, 40 CFR 50, Appendix A. (January 1, 1974).

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (9.0) 34:10:02:13. Method for total suspended particulate measurements. Total suspended particulates shall be measured in accordance with the method described in National Primary and Secondary Ambient Air Quality Standards, 40 CFR 50, Appendix B. (January 1, 1974).

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (9.0) 34:10:02:14. Method for continuous carbon monoxide measurements. Carbon monoxide shall be measured in accordance with the method described in National Primary and Secondary Ambient Air Quality Standards, 40 CFR 50, Appendix C. (January 1, 1974).

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (9.0) 34:10:02:15. Method for photochemical oxidant measurements. Photochemical oxidants shall be measured in accordance with the method described in National Primary and Secondary Ambient Air Quality Standards, 40 CFR 50, Appendix D. (January 1, 1974).

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (9.0) 34:10:02:16. Method for hydrocarbon measurements. Hydrocarbons shall be measured in accordance with the method described in National Primary and Secondary Ambient Air Quality Standards, 40 CFR 50, Appendix E. (January 1, 1974).

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (9.0) 34:10:02:17. Method for nitrogen dioxide measurements. Nitrogen dioxide shall be measured in accordance with the method described in National Primary and Secondary Ambient Air Quality Standards, 40 CFR 50, Appendix F. (January 1, 1974).

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (9.0) 34:10:02:18. Method for coefficient of haze measurements. Coefficient of haze shall be measured by the tape sampler method as described in the ASTM test method D 1704-61.

Note: Methods or specifications referenced to in this article are available by writing, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania, as published, October 28, 1971, at a cost of \$1.75 each.

- (4.0) 34:10:02:19. Degradation of ambient air having a higher quality than required by ambient air quality standards. Ambient air whose quality, as of the effective date of these rules, is higher than the standards set forth in these rules shall be maintained at the higher quality unless it can be affirmatively demonstrated to the board that a change in quality is justifiable and will be consistent with the promotion of the public health, safety and welfare and will not be contrary to the guidelines of 34:10:02:01.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- 34:10:02:20. Repealed.

34:10:02:21. Repealed.

- (8.0) 34:10:02:22. Pollution episode criteria. Conditions justifying the proclamation of an air pollution alert, air pollution warning, or air pollution emergency shall be deemed to exist whenever the secretary determines that the accumulation of air pollutants in any place is attaining or has attained levels which could, if such levels are sustained or exceeded, lead to a substantial threat to the health of persons. When any of the episode criteria levels are reached, the public will be notified in the form of a press release to all news media. In making this determination, the secretary will use the criteria in 34:10:02:23 to 34:10:02:27 inclusive.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (8.0) 34:10:02:23. Air pollution forecast. An internal watch by the department shall be actuated by a national weather service advisory that an atmospheric stagnation advisory or the equivalent local forecast of stagnant atmospheric conditions is in effect.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (8.0) 34:10:02:24. Alert. The alert level is that concentration of pollutants at which the actions set out in 34:10:02:36 are to begin. An alert will be declared when any one of the following levels is reached at any monitoring site:
- (1) Sulfur dioxide at eight hundred micrograms per cubic meter, 0.3 parts per million, over a twenty-four average;
 - (2) Particulate matter at a coefficient of haze of 3.0, or three hundred seventy-five micrograms per cubic meter, over a twenty-four hour average;
 - (3) Sulfur dioxide and particulate matter combined at a level where the product of sulfur dioxide in parts per million over a twenty-four hour average and the coefficient of haze is equal to 0.2, or the product of sulfur dioxide in micrograms per cubic meter over a twenty-four hour average and particulate matter in micrograms per cubic meter over a twenty-four hour average is equal to 6.5×10^4 .

In addition, meteorological conditions are to be such that pollutant concentrations can be expected to remain at the above levels for twelve or more hours, or to increase unless control actions are taken.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (8.0) 34:10:02:25. Warning. The warning level indicates that air quality is continuing to degrade from the alert level and that additional control actions are necessary. A warning will be declared when any one of the following levels is reached at any monitoring site:

- (1) Sulfur dioxide at sixteen hundred micrograms per standard cubic meter (0.6 parts per million) over a twenty-four hour average;
- (2) Particulate matter at a coefficient of haze of 5.0 or six hundred twenty-five micrograms per cubic meter over a twenty-four hour average;
- (3) Sulfur dioxide and particulate matter combined at a level where the product of sulfur dioxide in parts per million over a twenty-four hour average and the coefficient of haze is equal to 0.8, or the product of sulfur dioxide in micrograms per cubic meter over a twenty-four hour average and particulate matter in micrograms per cubic meter over a twenty-four hour average is equal to 2.61×10^5 ;

In addition, meteorological conditions are to be such that pollutant concentrations can be expected to remain at the above levels for twelve or more hours, or to increase unless control actions are taken.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (8.0) 34:10:02:26. Emergency. The emergency level indicates that air quality is continuing to degrade to a level that should never be reached and that the most stringent control actions are necessary. An emergency will be declared when any one of the following levels is reached at any monitoring site:

- (1) Sulfur dioxide at twenty-one hundred micrograms per cubic meter (0.8 parts per million) over a twenty-four hour average;
- (2) Particulate matter at a coefficient of haze of 7.0 or eight hundred seventy-five micrograms per cubic meter, over a twenty-four hour average;
- (3) Sulfur dioxide and particulate matter combined at a level where the product of sulfur dioxide in parts per million over a twenty-four hour average and the coefficient of haze is equal to 1.2, or the product of sulfur dioxide in micrograms per cubic meter over a twenty-four hour average and particulate matter in micrograms per cubic meter over a twenty-four hour average is equal to 3.93×10^5 .

In addition, meteorological conditions are to be such that this condition can be expected to continue for twelve or more hours. In attainment of the emergency level, the secretary shall order any sources contributing to the occurrence of the level to reduce or discontinue emissions.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (8.0) 34:10:02:27. Termination. Once declared, any status reached by application of these criteria will remain in effect until the criteria for that level are no longer met. At such time, the appropriate lower status will be assumed.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (8.0) 34:10:02:28. Abatement strategies emission reduction. When the department declares an air pollution alert, warning, or emergency, all persons required to submit a preplanned abatement strategy plan shall put into effect such plan for the level declared.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-50.

- (8.0) 34:10:02:29. Specified criteria level caused by limited number of sources. Upon determination by the department that a specified criteria level has been reached at one or more monitoring sites solely because of emissions from a limited number of sources, the department shall notify such sources that the action set forth in the preplanned abatement strategy plan shall be put into effect until the criteria of the specified level are no longer met.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-50.

- (50.0) 34:10:02:30. Person required to file a Preplanned Abatement Strategies Plan.
Any person responsible for the operation of:

- (1) Coal or oil fired electric power generating facilities;
- (2) Coal or oil fired process steam generating facilities;
- (3) Primary metal industries;
- (4) Petroleum refining industries;
- (5) Chemical industries;
- (6) Mineral processing operations; and
- (7) Grain industries

which has the potential without emission controls of emitting one hundred tons of any given pollutant in a year and is within five miles of any city over forty thousand population shall prepare abatement strategy plans for reducing the emission of air pollutants during periods of an air pollution alert, warning, or emergency. Abatement strategies plans shall be designed to reduce or eliminate emissions of air pollutants in accordance with objectives set forth in 34:10:02:36 to 34:10:02:38 inclusive.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (50.0) 34:10:02:31. Preplanned abatement strategies plans requested of any person.
(8.0) Any person responsible for the operation of a source not set forth under 34:10:02:30 shall, when requested by the department

in writing, prepare abatement strategy plans for reducing the emissions of air pollutants during an air pollution alert, warning, and emergency.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (50.0) 34:10:02:32. Preplanned abatement strategies plans content - Submission.
(3.0) Abatement strategies plans, prepared pursuant to 34:10:02:30 and 34:10:02:31, shall be in writing, identify the source of air pollutants, the approximate amount of reduction of air pollutants which will be attained for each pollution episode level, and a brief description of manner in which the reduction will be achieved during an air pollution alert, warning, and emergency. The original and one copy of the abatement strategies plans shall be submitted to the department upon request within thirty days of receipt of such request. New sources shall submit abatement strategies plans with application for a construction permit.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19, and 34-16A-27.

- (2.0) 34:10:02:33. Review and approval of abatement strategies plans - Return of copy. Abatement strategies plans shall be subject to review and approval by the department. The department shall accept or reject the plans filed pursuant to 34:10:02:30 and 34:10:02:31. If the plans are rejected the department shall state the reasons for such rejection and what amendments are necessary to make plans acceptable. Upon approval of the abatement strategies the department shall keep the original of the plans and return the copy of the plans to the operator of the source.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (2.0) 34:10:02:34. Copy of Preplanned Abatement Strategies Plans kept at source.
(8.0) The operator of the source shall keep a copy of the abatement strategies plans on the premises and available to any authorized agent or employee of the department.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-12.

- (2.0) 34:10:02:35. Abatement strategy plans for generating facilities. The following
(8.0) measures must be addressed in an abatement strategy plan written pursuant to 34:10:02:30 for coal and oil fired generating facilities and will be a minimum requirement for the reduction of emissions during the alert, the warning and the emergency air pollution episodes:
- (1) Reduction of emissions by utilization of available fuels having low ash and sulfur content;
 - (2) Reduction of emission by diverting to electric power from generation facilities outside of the alert area where possible; and

- (3) Reduction of steam load demands consistent with continuing plant operations.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-50.

- (8.0) 34:10:02:36. Abatement strategy plans for manufacturing and processing facilities. The following measures must be addressed in the abatement strategy plans written pursuant to 34:10:02:30 to 34:10:02:31 for all manufacturing and processing facilities, and are to be used to the fullest extent possible for the reduction of emission during the alert, warning and emergency episodes:

- (1) Reduction of air pollutants from manufacturing operations by curtailing, postponing, or deferring production;
- (2) Reduction of emissions by deferring trade waste disposal operations which emit solid particles, vapors or malodorous substances;
- (3) Reduction of heat load demand for processing.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-50.

- (8.0) 34:10:02:37. Action to be taken during an air pollution alert. Upon determination by the secretary that an air pollution alert level exists at one or more monitoring sites the following action shall be taken in that area.

- (1) There shall be no open burning by any person of tree waste, vegetation, refuse, or debris in any form;
- (2) The use of incinerators for the disposal of any form of solid waste shall be limited to the hours between twelve noon and four p.m.;
- (3) Persons operating fuel burning equipment which requires boiler lancing or soot blowing shall perform such operations only between the hours of twelve noon and four p.m. unless such sources are equipped with a high efficiency electrostatic precipitator or other equivalent particulate collecting device;
- (4) Persons operating motor vehicles should eliminate all unnecessary use;

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-50.

- (8.0) 34:10:02:38. Action to be taken during an air pollution warning. Upon determination by the secretary that an air pollution warning exists, all commercial and manufacturing establishments will implement the warning phase of the abatement strategy plan in addition to the requirements of 34:10:02:37; or, if no abatement strategy

has been approved, will institute such actions that will result in maximum reduction of air pollutants emitted from their operations by ceasing or curtailing operation to the fullest extent possible without causing injury to persons or damage to equipment.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-50.

(8.0) 34:10:02:39. Action to be taken during an air pollution emergency. Upon determination by the secretary that an air pollution emergency exists all places of employment described below shall immediately cease operations:

- (1) Mining and quarrying of minerals;
- (2) All construction work except that which must proceed to avoid emergent physical harm to person, livestock, equipment, or buildings;
- (3) All manufacturing establishment unless exempted under an approved air pollution emergency abatement strategy plan for the purpose of protecting equipment, material or personal safety;
- (4) All wholesale trade establishments, except those engaged in the distribution of drugs, surgical supplies, and food;
- (5) All offices of local, county and state government, except those necessary for public safety and welfare, and the enforcement of the provisions of this order;
- (6) All retail trade establishments, except pharmacies, surgical supply distributors and stores primarily engaged in the sale of food;
- (7) Banks, credit agencies other than banks, securities and commodities brokers, dealers exchanges, and services, offices of insurance carriers, agents and brokers, and real estate officers.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-50.

CHAPTER 34:10:03

CONTROL OF VISIBLE EMISSIONS

- (50.1.2) 34:10:03:01. Restrictions on visible emissions. No person shall discharge into the ambient air from any single source of emissions whatsoever, any air contaminant of a shade or density equal to or darker than that designated as No. 1 on the Ringelmann chart or twenty percent opacity.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (50.1.2) 34:10:03:02 Brief emissions in excess of restrictions permitted. A person may discharge into the atmosphere from any single source of emission, for a period or periods aggregating not more than three minutes in any sixty consecutive minutes, air pollutants of a shade or density not darker than No. 3 on the Ringelmann chart or sixty percent opacity.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (50.1.2) 34:10:03:03 Exceptions to restrictions. The provisions of section 34:10:03:01 shall not apply:

- (1) Where the presence of uncombined water is the only reason for failure to meet the requirements of section 34:10:03:01;
- (2) When smoke is emitted for the purpose of training or research, when approved by the board;
- (3) During brief periods during such operations as soot blowing and startup. This does not apply to wood waste burners.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (51.20) 34:10:03:04 Exceptions granted to wood waste burners. A wood waste burner may discharge into the atmosphere for a period or periods aggregating not more than one hour in any twenty four hours, air pollutants of a shade or density that exceeds those limits designated in section 34:10:03:01. The time period listed in this exemption will apply only during periods of startup, building, and shutdown of fires in wood waste burners.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

CHAPTER 34:10:04

- (51.9) 34:10:04:01. Refuse burning restrictions. No person shall dispose of refuse or other combustible material or both by open burning, or cause, suffer, allow, or permit open burning of refuse of other combustible material, or both and no person shall conduct or cause or permit the conducting of a salvage operation by open burning.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.13) 34:10:04:02. Permissible open burning. The open burning of refuse, or other combustible materials, or both is prohibited unless conducted for the purpose specified in, and conducted in conformity with, 34:10:04:03 to 34:10:04:12, inclusive. No open burning activities shall be conducted in violation of local laws, ordinances, or regulations. The authority to conduct open burning under the provisions of 34:10:04:03 to 34:10:04:12 inclusive does not exempt or excuse a person from the consequences, damages, or injuries which may result therefrom. No permit shall be required to operate under these exemptions, but a variance for open burning otherwise prohibited under this chapter may be granted under chapter 34:10:01.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.13) 34:10:04:03. Fires for training of fire fighting personnel permitted. Fires may be purposely set for the instruction and training of public and industrial firefighting personnel when authorized by the appropriate local governmental entity.

General Authority: SDCL 34-16A-12. Law Implemented: 34-16A-24.

- (51.13) 34:10:04:04. Fires for the elimination of a fire hazard permitted. Fires may be set for the elimination of a fire hazard which cannot be abated by any other practical means when authorized by the appropriate local governmental entity.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.13) 34:10:04:05. Fire removal of hazardous material permitted. Fires may be set for the removal of hazardous or dangerous material where there is no other practical or lawful method of disposal after informing the department of the proposed fire.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.13) 34:10:04:06. Campfires and other recreational fires permitted. Campfires and other fires which are used solely for recreational purposes, for ceremonial occasions, or for outdoor preparation of food are permitted.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.13) 34:10:04:07. Fires used in management of forests and game permitted. Fires may be purposely set to forest or rangelands for a specific reason in the management of forests and game in accordance with practices recommended by the South Dakota game fish and parks department, the South Dakota department of agriculture, or the United States forest service.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.13) 34:10:04:08. Open burning for land clearing and disposal of trees under certain conditions. The burning of trees, brush, grass, wood, and other vegetable matter in the clearing of land, right-of-way maintenance operations, and agricultural crop burning, is permitted on site if the following conditions are met:

- (1) Prevailing winds at the time of the burning must be away from any city closer than a mile from the burning site;
- (2) The location of the burning must not be closer than five hundred feet from an occupied residence other than those located on the property on which the burning is conducted and the prevailing winds shall be away from any residences likely to be affected by the smoke;
- (3) Care must be taken to minimize the amount of dirt on the material being burned;
- (4) Oils, rubber, or other materials which produce unreasonable amounts of air contaminants may not be burned;
- (5) The initial burning may begin only between three hours after sunrise and three hours before sunset and when weather conditions are such that there will be good smoke dispersion, and additional fuel may not be intentionally added to fires at times outside the limits stated above;
- (6) The burning must not be conducted so as to obscure visibility and create a traffic hazard on any public road; and

- (7) The burning must not be conducted within one mile of any military, commercial, county, municipal, or private airport or landing strip.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

34:10:04:08.01 The open burning of trees by municipalities. The open burning of trees by any municipality shall allow, after prior notification to the department, on three separate days per year if such burning is in compliance with 34:10:04:08 and does not occur adjacent to an active portion of a solid waste disposal site. Such burning by municipalities may be conducted at other times by trench burning or, upon approval of the department, by other equally effective methods.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

(51.9) 34:10:04:09. Refuse burning in rural areas. In areas where no organized collection system or disposal facility is available, the burning of refuse or combustible materials or both generated on the premises may be conducted in a container providing the following conditions are met:

- (1) The material to be burned must not be the combined waste from three or more households;
- (2) The burning must be conducted on one of the properties on which the waste is generated; and
- (3) The burning must comply with 34:10:04:08 (5).

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

(51.13) 34:10:04:10. Burning of spilled hydrocarbons. The burning of hydrocarbons which are spilled or lost as a result of pipeline breaks or other accidents involving their transportation, exploration, development, refining, or other process operations will be permitted if the following conditions are met:

- (1) The material cannot be practicably recovered or otherwise lawfully disposed of in some other manner;
- (2) The burning must not be conducted within a city or adjacent to an occupied residence;
- (3) The burning must be in accord with 34:10:04:08 (5,6 and 7); and
- (4) The burning must be controlled so that a traffic hazard is not created as the result of air contaminants being released.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.13) 34:10:04:11. Burning of wasted hydrocarbons. The burning of gaseous hydrocarbons, which must be wasted from a process, must be through the use of atmospheric flares.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.13) 34:10:04:12. Burning of demolition debris. The burning of demolition or construction debris is allowed upon approval of appropriate local authorities and under the conditions of 34:10:04:08, subdivision (3) to (7), inclusive. Nothing in this section shall authorize the violation of a local ordinance.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

CHAPTER 34:10:05

SAMPLING AND TESTING METHODS

- (9.0) 34:10:05:01 Emission standards testing by approved methods only. All emission tests for existing sources shall be made and the results calculated in accordance with test procedures established for similar new sources in Chapter 34:10:12. Where no similar new source is governed by Chapter 34:10:12 these tests shall be made in accordance with the appropriate method in 40 CFR 60, Appendix A. To the extent that 40 CFR 60, Appendix A is not applicable methods shown to be capable of providing valid test results for the source in question will be utilized. All tests shall be made under the direction of persons qualified by training or experience in the field of air pollution control.

General Authority: SDCL 34-16A-12. Law Implemented: 34-16A-19.

- (9.0) 34:10:05:02 Emission standard testing requested by the secretary. The secretary may conduct or require tests of emissions, including stack sampling, for air pollutants from any source where there is good reason to believe a violation has occurred. Upon the request of the secretary, the person responsible for the source to be tested shall provide necessary ports in stack, or ducts, and such other safe and proper sampling and testing facilities as may be necessary for proper determination of emissions of air pollutants.

General Authority: SDCL 34-16A-12. Law Implemented: 34-16A-19.

CHAPTER 34:10:06

CONTROL OF PARTICULATE EMISSIONS

- (51.9) 34:10:06:01. Emission restrictions for incinerators. No person shall cause or permit any incinerator or wood waste burner to emit pollutants of a shade or density equal to or darker than that designated as No. 1 on the Ringelmann chart or twenty percent opacity. Furthermore, no fly ash emitted from such sources shall have a greater dimension than one hundred microns. No other emission limitations shall apply to these sources except as found in chapter 34:10:03.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

34:10:06:02. Repealed.

34:10:06:03. Repealed.

34:10:06:04. Repealed.

- (51.5) 34:10:06:05. Emission restrictions for fuel burning equipment. No person shall cause or permit the emission from fuel equipment burning solid fuel or fuel oil, particulate matter in excess of 0.30 pounds per million BTU ($0.54 \text{ gm}/10^6 \text{ gm-cal}$) of heat input.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.5) 34:10:06:06. Heat input values of fuel burning units. For purposes of this regulation, the heat input shall be the aggregate heat content of all fuels whose products of combustion pass through a stack or stacks. The heat input value used shall be the equipment manufacturer's or designer's guaranteed maximum input, whichever is greater; however, this section shall not be construed as prohibiting derating to meet emission standards. The total input of all fuel burning units on a plant or premises shall be used for determining the maximum allowable amount of particulate matter which may be emitted.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (50.1.1) 34:10:06:07. Emission from process industries. No person who operates a process industry shall cause or permit the emission of particulate matter in any one hour from any such source in excess of the amount shown in subsection (1) through (12) for the process weight rate allocated to such source:

- (1) If the process weight rate is one hundred pounds per hour, the emission rate shall not exceed 0.551 pounds per hour;
- (2) If the process weight rate is six hundred pounds per hour, the emission rate shall not exceed 1.83 pounds per hour;

- (3) If the process weight is one thousand pounds per hour, the emission rate shall not exceed 2.58 pounds per hour;
- (4) If the process weight is five thousand pounds per hour, the emission rate shall not exceed 7.58 pounds per hour;
- (5) If the process weight is ten thousand pounds per hour, the emission rate shall not exceed 12.0 pounds per hour;
- (6) If the process weight rate is twenty thousand pounds per hour, the emission rate shall not exceed 19.2 pounds per hour;
- (7) If the process weight rate is sixty thousand pounds per hour, the emission rate shall not exceed 40.0 pounds per hour;
- (8) If the process weight rate is eighty thousand pounds per hour, the emission rate shall not exceed 42.5 pounds per hour;
- (9) If the process weight rate is one hundred and twenty thousand pounds per hour, the emission rate shall not exceed 46.3 pounds per hour;
- (10) If the process weight rate is one thousand and sixty thousand pounds per hour, the emission rate shall not exceed 49.0 pounds per hour;
- (11) If the process weight rate is two hundred thousand pounds per hour, the emission rate shall not exceed 51.2 pounds per hour;
- (12) If the process weight rate is one million pounds per hour, the emission rate shall not exceed 69.0 pounds per hour.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

(50.1.1) 34:10:06:08. Interpolation for process weight rates not given in section 34:10:06:07. Interpolation of the data in section 34:10:06:07 for process weight rates up to sixty thousand pounds per hour shall be accomplished by use of the equation: $E = 4.10 P^{0.67}$, and interpolation and extrapolation of the data for the process weight rates in excess of sixty thousand pounds per hour shall be accomplished by use of the equation: $E = 55.0 P^{0.11-40}$, where "E" is the rate of emission in pounds per hour and "P" is the process weight rate in tons per hour.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

(50.1.1) 34:10:06:09. Process weight. Process weight per hour is the total weight of all materials introduced into any specific process that may cause any emission of particulate matter. Solid fuels charged will be considered as part of the process weight, but liquid and gaseous fuels and combustion air will not. For a cyclical or batch operation, the process weight per hour will be derived

by dividing the total process weight by the number of hours in one complete operation from the beginning of any given process to the completion thereof, excluding any time during which the equipment is idle. For a continuous operation, the process weight per hour will be derived by dividing the process weight for a typical period of operating time, by the time period.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (2.0) 34:10:06:10. Most stringent interpretation applicable. Where the nature of any process or operation or the design of any equipment is such as to permit more than one interpretation of this regulation, the interpretation that results in the minimum value for allowable emission shall apply.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (50.1.1) 34:10:06:11. Total process weight for multiple unit processes. For purposes of these regulations, the total process weight from all similar process units at a plant or premises shall be used for determining the maximum allowable emission of particulate matter that passes through a stack or stacks.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- 34:10:06:12. Repealed.

CHAPTER 34:10:07

CONTROL OF SULFUR COMPOUND EMISSIONS

- (51.6) 34:10:07:01 Applicability of sulfur dioxide emission standards from fuel combination. Sections 34:10:07:02 and 34:10:07:03 shall apply to any installation in which fuel is burned primarily to produce heat and in which the sulfur dioxide emission is substantially due to the content of the fuel burned.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (1.0) 34:10:07:02 Definition of fuel burning installation: For purposes of section 34:10:07:03, a fuel burning installation is any single fuel burning furnace or boiler or other unit, device, or contrivance in which fuel is burned or any grouping of two or more such furnaces or boilers or other units, devices, or contrivances on the same premises or otherwise located in close proximity to each other and under control of the same person. The capacity of such installation shall be the manufacturer's or designer's guaranteed maximum heat input rate.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.6) 34:10:07:03 Control applicable to fuel burning installations. No person shall cause or permit the emission of sulfur dioxide to the ambient air from any fuel burning installation in an amount greater than three pounds of sulfur dioxide per million BTU's of heat input to the installation.

General Authority: SDCL 34-16A-12. Law Implemented: 34-16A-24.

CHAPTER 34:10:12
NEW SOURCE STANDARDS

CHAPTER 34:10:12

- (10.0) 34:10:12:01. Applicability. The provisions of this chapter as excerpted and condensed from the federal register shall apply to the owner or operator of a stationary source when the stationary source contains an affected facility, the construction or modification of which is commenced sixty days after the effective date of this chapter. A rule in this chapter shall supersede any rule in another chapter to the extent that such rules conflict.

General Authority: SDCL 34-16A-11. Law Implemented: SDCL 34-16A-11.

- (1.0) 34:10:12:02. Definitions. As used in this chapter, all terms not defined
(10.C) herein have the meaning given them in the act in 34:10:12:01:

- (1) "Acid mist", sulfuric acid mist, as measured by Method 8 of Appendix A, 40 CFR 60;
- (2) "Affected facility", with reference to a stationary source, any apparatus to which a standard is applicable;
- (3) "Alternate method", any method of sampling and analyzing for an air pollutant which is not a reference or equivalent method, but which has been demonstrated to the department's satisfaction to produce, in specific cases, results adequate for determination of compliance;
- (4) "Asphalt concrete plant", any facility, as described in 34:10:12:40, used to manufacture asphalt concrete by heating and drying aggregate and mixing with asphalt cements;
- (5) "Basic oxygen process furnace", any furnace producing steel by charging scrap steel, hot metal, and flux materials into a vessel and introducing a high volume of an oxygen rich gas;
- (6) "Blast furnace", any furnace used to recover metal from slag;
- (7) "Brass or bronze", any metal alloy containing copper as its predominant constituent, and lesser amounts of zinc, tin, lead, or other metals;
- (8) "Coke burnoff", the coke removed from the surface of the fluid catalytic cracking unit catalyst by combustion in the catalyst regenerator. The rate of coke burn-off is calculated by the formula specified in 34:10:12:51;
- (9) "Commenced", with respect to the definition of "new source" in this chapter, that an owner or operator has undertaken a continuous program of construction or modification, or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification;
- (10) "Condensate", hydrocarbon liquid separated from natural gas which condenses due to changes in the temperature or pressure, or both, and remains liquid at standard conditions;

- (11) "Construction", fabrication, erection, or installation of an affected facility.
- (12) "Custody transfer", the transfer of produced petroleum, condensate, or both after processing or treating, or both in the producing operations, from storage tanks or automatic transfer facilities to pipelines or any other forms of transportation;
- (13) "Day", any continuous twenty-four hour period;
- (14) "Drilling and production facility", all drilling and servicing equipment, wells, flow lines, separators, equipment, gathering lines, and auxiliary nontransportation related equipment used in the production of petroleum but does not include natural plants;
- (15) "Electric furnace" any furnace which uses electricity to produce over fifty percent of the heat required in the production of refined brass or bronze;
- (16) "Equivalent method" any method of sampling and analyzing for an air pollutant which have been demonstrated to have a consistent and quantitatively known relationship to the reference method under specified conditions;
- (17) "Floating roof", a storage vessel cover consisting of a double deck, pontoon single deck, internal floating cover or covered floating roof, which rests upon and is supported by the petroleum liquid being contained, and is equipped with a closure seal or seals to close the space between the roof edge and tank wall;
- (18) "Fossil fuel", natural gas, petroleum, coal, and any form of solid, liquid, or gaseous fuel derived from such materials for the purpose of creating useful heat;
- (19) "Fossil fuel-fired steam generating unit", a furnace or boiler used in the process of burning fossil fuel for the purpose of producing steam by heat transfer;
- (20) "Fuel gas", any gas which is generated by a petroleum refinery process unit and which is combusted, including any gaseous mixture of natural gas and fuel gas which is combusted;
- (21) "Fuel gas combustion device", any equipment, such as process heaters, boilers and flares used to combust fuel gas, but does not include fluid coking unit and fluid catalytic cracking unit incinerator-waste heat boilers or facilities in which gases are combusted to produce sulfur or sulfuric acid;
- (22) "Hourly period", a sixty minute period commencing on the hour;

- (23) "Hydrocarbon", any organic compound consisting predominantly of carbon and hydrogen;
- (24) "Isokinetic sampling", sampling in which the linear velocity of the gas entering the sampling nozzle is equal to that of the undisturbed gas stream at the sample point;
- (25) "Lead", elemental lead or alloys in which the predominant component is lead;
- (26) "Malfunction", any sudden and unavoidable failure of air pollution control equipment or process equipment or of a process to operate in a normal or usual manner. Failures that are caused entirely or in part by poor maintenance, careless operation, or any other preventable upset condition or preventable equipment breakdown shall not be considered malfunctions;
- (27) "Nitric acid production unit", any facility producing weak nitric acid by either the pressure or atmospheric pressure process;
- (28) "Nitrogen oxides", all oxides of nitrogen except nitrous oxide, as measured by test methods set forth in this chapter;
- (29) "Owner or operator", any person who owns, leases, operates, controls, or supervises an affected facility or a stationary source of which an affected facility is a part;
- (30) "Particulate matter", any finely divided solid or liquid material, other than uncombined water, as measured by Method 5 of Appendix A, 40 CFR 60 or an equivalent or alternative method;
- (31) "Petroleum", the crude oil removed from the earth and the oils derived from tar sands, shale, and coal;
- (32) "Petroleum liquids", petroleum, condensate, and any finished or intermediate products manufactured in a petroleum refinery but does not mean Number 2 through Number 6 fuel oils as specified in ASTM D396-69, gas turbine fuel oils Numbers 2-GT through 4-GT as specified in ASTM D2880-71, or diesel fuel oils Numbers 2-D and 4-D as specified in ASTM D975-68;¹
- (33) "Petroleum refinery", any facility engaged in producing gasoline, kerosene, distillate fuel oils, residual fuel oils, lubricants, or other products through distillation of petroleum or through redistillation, cracking or reforming of unfinished petroleum derivatives;
- (34) "Portland cement plant", any facility manufacturing portland cement by either the wet or dry process;

- (35) "Process gas", any gas generated by a petroleum refinery unit, except fuel gas and process upset gas as defined in this section;
- (36) "Process upset gas", any gas generated by a petroleum refinery process unit as a result of startup, shutdown, upset or malfunction;
- (37) "Proportional sampling", sampling at a rate that produces a constant ratio or sampling rate to stack gas flow rate;
- (38) "Reference method", any method of sampling and analyzing for an air pollutant as described in Appendix A, 40 CFR 60;
- (39) "Refinery process unit", any segment of the petroleum refinery in which a specific processing operation is conducted;
- (40) "Reid vapor pressure", the absolute vapor pressure volatile crude oil and volatile nonviscous petroleum liquids, except liquified petroleum gases, as determined by ASTM D-323-58 (reapproved 1968);
- (41) "Reverberatory furnace", the following types of reverberatory furnaces: stationary, rotating, rocking, and tilting;
- (42) "Run", the net period of time during which an emission sample is collected. Unless otherwise specified, a run may be either intermittent or continuous within the limits of good engineering practice;
- (43) "Secondary lead smelter", any facility producing lead from a lead-bearing scrap material by smelting to the metallic form;
- (44) "Shutdown", the cessation of operation of an affected facility for any purpose;
- (45) "Solid waste", refuse, more than fifty percent of which is municipal type waste consisting of a mixture of paper, wood, yard wastes, food wastes, plastics, leather, rubber, and other combustibles, and non-combustible materials such as glass and rock;
- (46) "Standard", a standard of performance proposed or promulgated under this part;
- (47) "Startup", the setting in operation of an affected facility for any purpose;
- (48) "Stationary source", any building, structure, facility, or installation which emits or may emit an air pollutant;

- (49) "Steel production cycle", the operations required to produce each batch of steel and includes the following major fuctions: scrap charging, preheating when used, and tapping;
- (50) "Storage vessel", any tank, reservoir, or container used for the storage of petroleum liquids, but does not include:
 - (a) Pressure vessels which are designed to operate in excess of fifteen pounds per square inch gauge without emissions to the atmosphere except under emergency conditions;
 - (b) Subsurface caverns or porous rock reservoirs, or
 - (c) Underground tanks if the total volume of petroleum liquids added to and taken from a tank annually does not exceed twice the volume of the tank;
- (51) "Sulfuric acid production unit", any facility producing sulfuric acid by the contact process by burning elemental sulfur, alkylation acid, hydrogen sulfide, organic sulfides, and mercaptans, or acid sludge, but does not include facilities where conversion to sulfuric acid is utilized primarily as a means of preventing emissions to the atmosphere of sulfur dioxide or other sulfur compounds;
- (52) "True vapor pressure", the equilibrium partial pressure exerted by a petroleum liquid as determined in accordance with methods described in American Petroleum Institute Bulletin 2517, Evaporation Loss from Floating Roof Tanks, 1962;²
- (53) "Vapor recovery system", a vapor gathering system capable of collecting all hydrocarbon vapors and gases discharged from the storage vessel and a vapor disposal system capable of processing such hydrocarbon vapors and gases so as to prevent their emission to the atmosphere;
- (54) "Weak nitric acid", nitric acid which is thirty to seventy percent in strength.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-12.

- Note: 1. Methods of specifications referenced to in this article are available by writing, American Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania, as published, October 28, 1971, at a cost of \$1.75 each.
2. This bulletin may be obtained by writing American Petroleum Institute, Publication and Distributions Section, 1801 K Street, N.W. Washington 20006, currently at a price of \$3.00 each.

(13.0) 34:10:12:03. Notification and record keeping. Notification and record keeping procedures shall be done in the following manner and instances:

- (1) Any owner or operator subject to this chapter shall furnish the department written notification as follows:
 - (a) A notification of the anticipated date of initial startup an affected facility within fifteen days after such date,
- (2) Any owner or operator subject to the provisions of this part shall maintain for a period of two years a record of the occurrence and duration of any startup, shutdown, or malfunction in the operation of any affected facility;
- (3) A written report of excess emissions shall be submitted to the department by each owner or operator for each calendar quarter. The report shall include the magnitude of excess emissions as measured by the required monitoring equipment reduced to the units of the applicable standard, the date, and time of commencement and completion of each period of excess emissions. Periods of excess emission due to startup, shutdown, and malfunction shall be specifically identified. The nature and cause of any malfunction, if known, the corrective action taken, or preventive measures adopted shall be reported. Each quarterly report is due by the thirtieth day following the end of the calendar quarter. Reports are not required for any quarter unless there have been periods of excess emissions; and
- (4) Any owner or operator subject to the provisions of this part shall maintain a file of all measurements, including monitoring and performance testing measurements, and all other reports and records required by all applicable subparts. Any such measurements, reports, and records shall be retained for at least two years following the date of such measurements, reports, and records.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

(9.0) 34:10:12:04. Initial performance tests for new sources. Within sixty days
(10.0) after achieving the maximum production rate at which the affected facility will be operated, but not later than one hundred eighty days after initial startup of such facility and at such other times as may be required by the department under SDCL 34-16A-19, the owner or operator shall conduct performance tests and furnish the department a written report of such performance test.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

(9.0) 34:10:12:05. Manner on which performance tests shall be conducted. Performance
(10.0) tests shall be conducted and data reduced in accordance with the test methods and procedures contained in this chapter unless the department:

- (1) Specifies or approves, in specific cases, the use of a reference method with minor changes in methodology;
- (2) Approves the use of an equivalent methods;
- (3) Approves the use of an alternative method the results of which has been determined to be adequate for indicating whether a specific source is in compliance; or
- (4) Waives the requirement for performance tests because the owner or operator of a source has demonstrated by other means to the satisfaction of the department that the affected facility is in compliance with the standard. Nothing in this paragraph shall be construed to abrogate the authority of the department to require testing under SDCL 34-16A-19.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (9.0) 34:10:12:06. Conditions for performance tests. Performance tests shall be conducted under such conditions as the department shall specify to the plant operator based on representative performance of the affected facility. The owner or operator shall make available to the department such records as may be necessary to determine the conditions of the performance tests. Operations during periods of startup, shutdown, and malfunction shall not constitute representative conditions of performance tests unless otherwise specified in the applicable standard.
- (10.0)

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (9.0) 34:10:12:07. Notice of performance test to the department. The owner or operator of an affected facility shall provide the department thirty days notice prior to the performance test to afford the department the opportunity to have an observer present.
- (10.0)

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (9.0) 34:10:12:08. Operator shall provide facilities. The owner or operator of an affected facility shall provide, or cause to be provided, performance testing facilities as follows:
- (10.0)
- (1) Sampling ports adequate for test methods applicable to such facility;
 - (2) Safe sampling platform;
 - (3) Safe access to sampling platform; and
 - (4) Utilities for sampling and testing equipment.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (9.0) 34:10:12:09. Test shall be based on average performance tests run. Each
(10.0) performance test shall consist of three separate runs using the applicable test method. Each run shall be conducted for the time and under the conditions specified in the applicable standard. For the purpose of determining compliance with an applicable standard, the arithmetic mean of results of the three runs shall apply. In the event that a sample is accidentally lost or conditions occur in which one of the three runs must be discontinued because of forced shutdown, failure of an irreplaceable portion of the sample train, extreme meteorological conditions, or other circumstances, beyond the owner or operator's control, compliance may, upon the department's approval, be determined using the arithmetic mean of the results of the two other runs.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (7.0) 34:10:12:10. Compliance with standards - Maintenance requirements. Compliance
(10.0) with standards set forth in this chapter shall be determined as follows:

- (1) Compliance with standards in this chapter, other than opacity standards shall be determined only by performance tests established for 34:10:12:04 through 34:10:12:09 inclusive;
- (2) Compliance with opacity standards in this chapter shall be determined by use of Test Method 9, Appendix A, 40 CFR Part 60 as amended by Federal Register 39872 to 39875, inclusive, (November 12, 1974);
- (3) The opacity standards set forth in this chapter shall apply at all times except during periods of startup, shutdown, malfunction, and as otherwise provided in the applicable standard, and
- (4) At all times, including periods of startup, shutdown, malfunction, owners and operators shall, to the extent practicable, maintain and operate any affected facility including associated air pollution control equipment in a manner consistent with good air pollution control practice for minimizing emissions. Determination of whether acceptable operating and maintenance procedures are being used will be based on information available to the department which may include, but is not limited to, monitoring results, opacity observations, review of operating and maintenance procedures, and inspection of the source.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (2.0) 34:10:12:11. Circumvention. No owner or operator subject to provisions of
this chapter shall build, erect, install, or use any article, machine, equipment or process, the use of which conceals an emission which would otherwise constitute a violation of an applicable standard. Such concealment includes, but is not limited to, the

use of gaseous dilutants to achieve compliance with an opacity standard or with a standard which is based on the concentration of a pollutant in the gases discharged to the atmosphere.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.5) 34:10:12:12. Applicability and designation of fossil fuel fired steam generators. Sections 34:10:12:13 to 34:10:12:21, inclusive are applicable to each fossil fuel fired steam generating unit of more than sixty-three million kilo calories per hour heat input (two hundred fifty million BTU per hour). Any change to an existing fossil fuel fired steam generating unit to accommodate the use of combustible materials, other than fossil fuels as defined in this chapter, shall not bring that unit under the applicability of this subpart.
- (51.6)

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.5) 34:10:12:13. Standard for particulate matter for fossil fuel fired generators. On and after the date on which the performance test required to be conducted by 34:10:12:04 through 34:10:12:09 inclusive is completed, no owner or operator subject to 34:10:12:12 shall cause to be discharged into the atmosphere from any fossil fuel fired steam generator gases which:
- (1) Contain particulate matter in excess of 0.18 grams per million calories heat input (0.10 pound per million British Thermal Units) derived from fossil fuel; and
 - (2) Exhibit greater than twenty percent opacity except that a maximum of forty percent opacity shall be permissible for not more than two minutes in any hour. Where the presence of uncombined water is the only reason for failure to meet the requirements of this paragraph, such failure will not be a violation of this section.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.6) 34:10:12:14. Standard for sulfur dioxide for fossil fuel fired generators. On and after the date on which the performance test required to be conducted by 34:10:12:04 through 34:10:12:09 inclusive is completed, no owner or operator subject to 34:10:12:12 shall cause to be discharged into the atmosphere from any fossil fuel fired generator facility any gases which contain sulfur dioxide in excess of:
- (1) 1.4 grams per million calories heat input (0.8 pounds per million British Thermal Units) derived from liquid fossil fuel; and
 - (2) 2.2 grams per million calories heat input (1.2 pounds per million British Thermal Units) derived from solid fossil fuel.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.6) 34:10:12:15. Determination of sulfur dioxide standard for fossil fuels burned simultaneously in combination - Formula. When different fossil fuels are burned simultaneously in any combination, the applicable standard shall be determined by proration using the following formula:

$$\frac{y(1.4) + z(2.2)}{y + z}$$

where:

"y" is the percentage of total heat input derived from liquid fossil fuel, and "z" is the percentage of total heat input derived from solid fossil fuel.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (51.6) 34:10:12:16. Basis of compliance with sulfur dioxide standards for fossil fuel fired generators. Compliance shall be based on the total heat input from all fossil fuels burned, including gaseous fuels.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19

- (51.6) 34:10:12:17. Emission and fuel monitoring for fossil fuel fired generators. There shall be installed, calibrated, maintained, and operated, in any fossil fuel fired steam generating unit subject to the provisions of this chapter, emission monitoring instruments as follows:
- (1) A photoelectric or other type smoke detector and recorder, except where gaseous fuel is the only fuel burned; and
 - (2) An instrument for continuously monitoring and recording sulfur dioxide emissions, except where gaseous fuel is the only fuel burned, or where compliance is achieved through low sulfur fuels and representative sulfur analysis of fuels are conducted daily in accordance with 34:10:12:19 and 34:10:12:20.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (9.0) 34:10:12:18. Capability of instruments and sampling systems. Instruments and sampling systems installed and used pursuant to 34:10:12:14 shall be capable of monitoring emission levels within twenty percent with a confidence level of ninety-five percent and shall be calibrated in accordance with methods prescribed by the manufacturers recommended zero adjustment and calibration procedures at least once per twenty four hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case such specifications or recommendations shall be followed. The applicable method specified in Appendix A, 40 CFR 60 shall be the reference method.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

(51.6) 34:10:12:19. Sulfur content of solid fuels sampling methods for fossil fuel generators. The sulfur content of solid fuels, as burned, shall be determined in accordance with the following methods of ASTM:

- (1) Mechanical sampling shall be done by Method D 2234-72;
- (2) Sample preparation shall be done by Method D 2013-72; and
- (3) Sample analysis shall be done by Method D 3176-74, 3180-74.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

Note: Methods or specifications referenced to in this section are available by writing, America Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania 19103, publication date indicated by last two digits, at cost of \$1.75 each.

(51.6) 34:10:12:20. Sulfur content of liquid fuels for fossil fuel fired generators. The sulfur content of liquid fuels, as burned, shall be determined in accordance with ASTM Methods D-1551-68, D 129-64 (reapproved 1968) or D 1552-64 (reapproved 1965).

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

Note: Methods or specifications referenced to in this article are available by writing, America Society for Testing and Materials, 1916 Race Street, Philadelphia, Pennsylvania, as published, October 28, 1971, at a cost of \$1.75 each.

(9.0) 34:10:12:21. Measurement of fuel burning rate daily - Heating value and ash
(13.0) content weekly - Electrical output daily - Recording. The rate of fuel burned for each fuel shall be measured daily or at shorter intervals and recorded. The heating value and ash content of fuels shall be ascertained at least once per week and recorded. Where the steam generating unit is used to generate electricity, the average electrical output and the minimum and maximum hourly generation rate shall be measured and recorded daily.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

(1.0) 34:10:12:22. Periods of excess emissions defined. For the purpose of reports required pursuant to 34:10:12:03 (3) for fossil fuel fired steam generator units, periods of excess emissions that shall be reported are defined as follows:

- (1) Opacity, all hourly periods during which there are three or more one-minute periods when the average opacity exceeds twenty percent;
- (2) Sulfur dioxide, any two consecutive hourly periods during which average sulfur dioxide emissions exceed 0.8 pound per million British Thermal Units heat input for liquid fossil fuel burning equipment; or for sources which elect to con-

duct representatives analyses of fuels in accordance with 34:10:12:19, or 34:10:12:20 in lieu of installing and operating a monitoring device pursuant to 34:10:12:17 (1), any calendar day during which fuel analysis shows that the limits of 34:10:12:14 are exceeded.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (51.5) 34:10:12:23. Test methods and procedures for fossil fuel fired generators. The
(51.6) performance tests for determining emission of particulate matter,
(51.7) sulfur dioxide, and nitrogen oxides from fossil fuel fired steam generating units and procedures under which such performance testing shall be conducted shall be those prescribed by 40 CFR 60.46.

General Authority: SDCL 34-16A-12. Law Implemented: 34-16A-19.

- (51.9) 34:10:12:24. Applicability and designation of incinerators. Sections 34:10:12:25 to 34:10:12:27, inclusive are applicable to each incinerator capable of more than fifty tons per day charging rate.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.9) 34:10:12:25. Standard for particulate matter for incinerators. On and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:09, inclusive is completed, no owner or operator shall cause to be discharged into the atmosphere from an incinerator any gases which contain particulate matter in excess of 0.18 milligrams per dry standard cubic meter (0.08 grains per dry standard cubic foot) corrected to twelve percent carbon dioxide.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.9) 34:10:12:26. Monitoring operations for incinerators. The owner or operator of any incinerator subject to 34:10:12:25 shall record the daily charging rates and hours of operation.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (51.9) 34:10:12:27. Test methods and procedures for incinerators. The performance tests for determining emissions of particulate matter from incinerators and procedures under which such performance testing shall be conducted shall be those stated in 40 CFR 60.54.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (51.3) 34:10:12:28. Applicability and designation of portland cement plants. The following types of portland cement plants must comply with 34:10:12:29 to 34:10:12:34, inclusive: Kiln, clinker cooler, raw mill system, finish mill system, raw mill dryer, raw material storage, clinker storage, finished product storage, conveyor transfer points, bagging and bulk loading and unloading systems.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

(51.2) 34:10:12:29. Particulate matter standards - Kilns. On and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:09, inclusive, is completed, no owner or operator subject to 34:10:12:28 shall cause to be discharged into the atmosphere from any kiln any gases which:

(1) Contain particulate matter in excess of 0.15 kilograms per metric ton of feed, dry basis, to the kiln (0.3 pounds per ton); and

(2) Exhibit greater than ten percent opacity.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

(51.2) 34:10:12:30. Particulate matter standards - Clinker cooler. On and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:09, inclusive, is completed, no owner or operator subject to 34:10:12:30 shall cause to be discharged into the atmosphere from any clinker cooler any gases which:

(1) Contain particulate matter in excess of 0.05 kilograms per metric ton of feed, dry basis, to the kiln (0.1 pounds per ton); and

(2) Exhibit ten percent opacity, or greater.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

(50.1.2) 34:10:12:31. Opacity standards for kilns and clinker cooler. On and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:09, inclusive, is completed, no owner or operator subject to 34:10:12:30 shall cause to be discharged into the atmosphere from any affected facility other than the kiln and clinker cooler any gases which exhibit ten percent opacity, or greater.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

(2.0) 34:10:12:32. Exemption for uncombined water. Where the presence of uncombined water is the only reason for failure to meet the requirements of 34:10:12:29(2), 34:10:12:30(2), and 34:10:12:31, such failure will not be a violation of the applicable opacity standard.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

(51.3) 34:10:12:33. Monitoring of operations for portland cement plants. The owner or operator of any portland cement plant subject to the provisions of 34:10:12:28 shall record the daily production rates and kiln feed rates.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (9.0) 34:10:12:34. Test methods and procedures. The performance tests for determining emissions of particulate matter from portland cement plant kilns and clinker coolers and the procedures under which such performance testing shall be conducted shall be those stated in 40 CFR 60.64.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (51.10) 34:10:12:35. Applicability and designation of nitric acid plants. Sections 34:10:12:36 to 34:10:12:40 inclusive are applicable to each nitric acid production unit.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.10) 34:10:12:36. Standard for nitric acid plants. On and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:09 inclusive, is completed, no owner or operator subject to 34:10:12:35 shall cause to be discharged into the atmosphere from any affected facility any gases which exhibit ten percent opacity, or greater. Where the presence of uncombined water is the only reason for failure to meet the requirements of this subsection, such failure will not be a violation of this section.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (13.0) 34:10:12:37. Daily record of production rate and hours. Production rate and hours of operation shall be recorded daily.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (51.18) 34:10:12:38. Applicability and designation of sulfuric acid plants. Sections 34:10:12:39 to 34:10:12:44 inclusive are applicable to each sulfuric acid production unit.

General Authority: ADCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.18) 34:10:12:39. Standard for sulfur dioxide for sulfuric acid plants. On and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:09 inclusive is completed, no subject to 34:10:12:38 shall cause to be discharged into the atmosphere from any affected facility any gases which contain sulfur dioxide in excess of two kilograms per metric ton of acid produced (four pounds per ton), the production being expressed as one hundred percent sulfuric acid.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-22.

- (51.18) 34:10:12:40. Standard for acid mist for sulfuric acid plants. On and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:09 inclusive is completed, no owner or operator subject to 34:10:12:38 shall cause to be discharged into the atmosphere from any affected facility any gases which:

- (1) Contain acid mist, expressed as sulfuric acid in excess of 0.075 kilograms per metric ton of acid produced (0.15 pounds per ton), the production being expressed as one hundred percent sulfuric acid, and
- (2) Exhibit ten percent opacity, or greater. Where the presence of uncombined water is the only reason for failure to meet the requirements of this subsection, such failure will not be a violation of this section.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.18) 34:10:12:41. Emission monitoring for sulfuric acid plants. There shall be installed, calibrated, maintained, and operated, in any sulfuric acid production unit subject to the provisions of 34:10:12:38, an instrument for continuously monitoring and recording emissions of sulfur dioxide.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (13.0) 34:10:12:42. Daily record of production rate and hours. Production rate and hours of operation shall be recorded daily.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (51.18) 34:10:12:43. Excessive emissions defined. For the purpose of owner or operator making written reports pursuant to 34:10:12:03 (3) for sulfuric acid production units, periods of excess emissions that shall be reported are defined as any two consecutive hourly periods during which average sulfur dioxide emissions exceed four pounds per ton of acid produced.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (9.0) 34:10:12:44. Test methods and procedures for sulfuric acid plants. The performance test for determining emissions of acid mist and sulfuric dioxide from sulfuric acid production units and procedures under which such performance testing shall be conducted shall be those stated in 40 CFR 60.85.
- (51.18)

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (51.8) 34:10:12:45. Applicability and designation of asphalt concrete plants. Sections 34:10:12:46 and 34:10:12:47 apply to each asphalt concrete plant. An asphalt concrete plant is comprised of any combination of the following: Dryers; systems for screening; handling, storing, and weighing hot aggregate; systems for loading, transferring and storing mineral filler; systems for mixing asphalt concrete; and the loading, transfer, and storage systems associated with emission control systems.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

(51.8) 34:10:12:46. Standard for particulate matter for asphalt concrete plants. On and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:09 inclusive is completed, no owner or operator subject to 34:10:12:45 shall discharge or cause the discharge into the atmosphere from any affected facility any gases which:

- (1) Contain particulate matter in excess of ninety milligrams per dry standard cubic meter (0.04 grains per dry standard cubic foot); and
- (2) Exhibit twenty percent opacity, or greater. Where the presence of uncombined water is the only reason for failure to meet the requirements of this paragraph, such failure shall not be a violation of this section.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

(51.8) 34:10:12:47. Test methods and procedures for asphalt concrete plants. The performance tests for determining emissions from asphalt concrete plants and procedures under which performance testing shall be conducted shall be those stated in 40 CFR 60.93 and Appendix A, thereof.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

(51.15) 34:10:12:48. Applicability and designation of petroleum refineries. Sections 34:10:12:49 to 34:10:12:60, inclusive are applicable to the following petroleum refineries: Fluid catalytic cracking unit catalyst regenerators, fluid catalytic cracking unit incinerator waste heat boilers, and fuel gas combustion devices.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

(51.15) 34:10:12:49. Standard for particulate matter for petroleum refineries. On and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:09, inclusive is completed, no owner or operator subject to 34:10:12:48 shall discharge or cause the discharge into the atmosphere from any fluid catalytic cracking-unit catalyst regenerator or from any fluid catalytic cracking-unit incinerator-waste heat boiler;

- (1) Particulate matter in excess of 1.0 kilograms per one thousand kilograms (1.0 pounds per 1000 pounds) of coke burn-off in the catalyst regenerator; and
- (2) Gases exhibiting thirty percent opacity or greater, except for three minutes in any one hour. Where the presence of uncombined water is the only reason for failure to meet the requirements of this subsection, such failure shall not be a violation of this section.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.5) 34:10:12:50. Standards for particulate matter for auxiliary fossil fuel
(51.9) in fluid catalytic cracking - waste heat boiler. In those instances in which auxiliary liquid or solid fossil fuels are burned in the fluid catalytic cracking unit incinerator-waste heat boiler, particulate matter in excess of that permitted by 34:10:12:49 emitted to the atmosphere, except that the incremental rate of particulate emissions shall not exceed 0.18 grams per million calories (0.10 pounds per million British Thermal Units) of heat input attributable to such liquid or solid fuel.

General Authority: SDCL 34-16A-12. Law Implemented: 34-16A-24.

- (51.15) 34:10:12:51. Standard for carbon monoxide for petroleum refineries. On and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:08 inclusive is completed, no owner or operator subject to 34:10:12:48 shall discharge or cause the discharge into the atmosphere from the fluid catalytic cracking unit catalyst regenerator any gases which contain carbon monoxide in excess of 0.05 percent by volume.

General Authority: SDCL 34-16A-12. Law Implemented: 34-16A-24.

- (51.15) 34:10:12:52. Standard for sulfur dioxide for petroleum refineries. On and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:09 inclusive is completed, no owner or operator subject to 34:10:12:48 shall burn in any fuel gas combustion device any fuel gas which contains hydrogen sulfide in excess of 230 milligram per dry standard cubic meter (0.10 grains per dry standard cubic foot) except as provided in 34:10:12:53. The combustion of process upset gas in a flare, or the combustion in a flare of process gas or fuel gas which is released to the flare as a result of relief valve leakage, is exempt from 34:10:12:52.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (6.0) 34:10:12:53. Alternative treatment of gases. The owner or operator may elect to treat the gases resulting from the combustion of fuel gas in a manner which limits the release of sulfur dioxide to the atmosphere if it is shown to the satisfaction of the department that this prevents sulfur dioxide emissions effectively as compliance with the requirements of 34:10:12:52.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.15) 34:10:12:54. Emission monitoring for petroleum refineries. The owner or
(9.0) operator of any petroleum refinery subject to the provisions of 34:10:12:48 shall install, calibrate, maintain, and operate monitoring instruments as follows:

- (1) A photoelectric or other type of smoke detector and recorder to continuously monitor and record the opacity of gases discharged into the atmosphere from the fluid catalytic cracking unit catalyst regenerator;
- (2) An instrument for continuously monitoring and recording the concentration of carbon monoxide in gases discharged into the atmosphere from fluid catalytic cracking unit catalyst regenerators, except where the requirements of 34:10:12:54 (3) are met;
- (3) Instruments for continuously monitoring and recording fire-box temperature and oxygen concentration in the exhaust gases from any incinerator-waste heat boiler which combusts the exhaust gases from a fluid catalytic cracking unit catalyst regenerator except where the requirements of 34:10:12:54 (2) are met;
- (4) An instrument for continuously monitoring and recording concentrations of hydrogen sulfide in fuel gases burned in any fuel gas combustion device, except where the requirements of 34:10:12:53 are met. Fuel gas combustion devices having a common source of fuel gas may be monitored at one location if sampling at this location produces results representative of the hydrogen sulfide concentration in the fuel gas burned;
- (5) An instrument for continuously monitoring and recording concentrations of sulfur dioxide in the gases discharged into the atmosphere from the combustion of fuel gases except where the requirements of 34:10:12:52 are met.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (9.0) 34:10:12:55. Instruments and sampling systems to meet department specifications. Instruments and sampling systems installed and used pursuant to 34:10:12:53 shall be calibrated in accordance with the method prescribed by the manufacturer of such instrument. The instruments shall be subjected to the manufacturer's recommended zero adjustment and calibration procedures at least once per twenty four hour operating period unless the manufacturer specifies or recommends calibration at shorter intervals, in which case such specifications or recommendations shall be followed.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (13.0) 34:10:12:56. Daily record of average coke burn-off rate and hours of operation
 (51.15) of petroleum refineries. The average coke burn-off rate (thousands of kilogram per hour) and hours of operation for any fluid catalytic cracking unit catalyst regenerator subject to 34:10:12:49, 34:10:12:50, and 34:10:12:51 shall be recorded daily.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (51.9) 34:10:12:57. Daily record of rate of combustion for fossil fuels and hours of operation at times fossil fuels are combusted. For any fluid catalytic cracking unit catalyst regenerator which is subject to 34:10:12:49 and 34:10:12:50 and which utilizes an incinerator-waste heat boiler to combust the exhaust gases from the catalyst regenerator, the owner or operator shall record daily the rate of combustion of liquid or solid fossil fuels in liters per hour or kilograms per hour, and the hours of operation during which liquid or solid fossil fuels are combusted in the incinerator waste heat boiler.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (50.0) 34:10:12:58. Excessive emissions defined. For the purpose of reports pursuant to 34:10:12:03 (3) for petroleum refineries, periods of excess emissions that shall be reported are defined as follows:

- (1) "Opacity," all hourly periods in which there are four or more one minute periods during which the average opacity of the gases discharged into the atmosphere from any fluid catalytic cracking unit catalyst regenerator subject to 34:10:12:49 and 34:10:12:50 exceeds thirty percent;
- (2) "Carbon monoxide," all hourly periods during which the average carbon monoxide concentration in the gases discharged into the atmosphere from any fluid catalytic cracking unit catalyst regenerator subject to 34:10:12:51 exceeds 0.05 percent by volume or any hourly period in which oxygen concentration and firebox temperature measurements indicate that the average concentration of carbon monoxide in the gases discharged into the atmosphere exceeds 0.5 percent by volume for sources which combust the exhaust gases from any fluid catalytic cracking unit catalyst regenerator subject to 34:10:12:51 in an incinerator-waste heat boiler and for which the owner or operator elected to monitor in accordance with 34:10:12:51.
- (3) "Hydrogen sulfide," all hourly periods during which the average hydrogen sulfide content of any fuel gas combusted in any fuel gas combustion device subject to 34:10:12:52 and 34:10:12:53 exceeds 230 milligrams per dry standard cubic meter (0.10 grains per dry standard cubic foot) except where the requirements of 34:10:12:53; and
- (4) "Sulfur dioxide," all hourly periods during which the average sulfur dioxide emissions discharged into the atmosphere from any fuel gas combustions device subject to 34:10:12:52 and 34:10:12:53 exceed the level specified in 34:10:12:53, except where the requirements of 34:10:12:52 are met.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (9.0) 34:10:12:59. Test methods and procedures for petroleum refineries. The performance tests for determining emissions from petroleum refineries and procedures under which performance testing shall be conducted shall be those stated in 40 CFR 60.106 and Appendix A thereof.
(51.15)

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (51.16) 34:10:12:60. Applicability and designation of storage vessels for petroleum liquids. Sections 34:10:12:61 through 34:10:12:65 apply to each storage vessel for petroleum liquids which has a storage capacity greater than 151,412 liters (40,000 gallons); except 34:10:12:61 to 34:10:12:65 inclusive do not apply to storage vessels for petroleum or condensate stored, processed, treated or all three at a drilling and production facility prior to custody transfer.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.16) 34:10:12:61. Standards for hydrocarbons for storage vessels for petroleum liquids. The owner or operator of any storage vessel to which 34:10:12:60 applies shall store petroleum liquids as follows;
- (1) If the true vapor pressure of the petroleum liquid, as stored, is equal to or greater than seventy-eight millimeters mercury (1.5 pounds per square inch absolute) but not greater than 570 millimeters mercury (11.1 pounds per square inch absolute), the storage vessel shall be equipped with a floating roof, a vapor recovery system, or their equivalents; and
 - (2) If the true vapor pressure of the petroleum liquid as stored is greater than 570 millimeters mercury (11.1 pounds per square inch absolute), the storage vessel shall be equipped with a vapor recovery system or its equivalent.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (9.0) 34:10:12:62. Monitoring of operations for storage vessels for petroleum liquids.
(51.16) The owner or operator of any storage vessel to which 34:10:12:60 (1) applies shall for each such storage vessel maintain a file of each type of petroleum liquid stored, and a few of the typical Reid vapor pressure of each type of petroleum liquid stored, and a few of the dates of storage. Dates on which the storage vessel is empty shall be shown.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (13.0) 34:10:12:63. Record of average monthly temperature and true vapor pressure.
(51.16) The owner or operator of any storage vessel to which 34:10:12:60 applies shall for each such storage vessel determine and record the average monthly storage temperature and true vapor pressure of the petroleum liquid stored at such temperature if:
- (1) The petroleum liquid has a true vapor pressure, as stored, greater than twenty-six millimeters mercury (0.5 pounds per

square inch absolute) but less than seventy-eight millimeters mercury (1.5 pounds per square inch absolute) and is stored in a storage vessel other than one equipped with a floating roof, a vapor recovery system or their equivalents; or

- (2) The petroleum liquid has a true vapor pressure, as stored, greater than 470 millimeters mercury (9.1 pounds per square inch absolute) and is stored in a storage vessel other than one equipped with a vapor recovery systems or its equivalent.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (1.0) 34:10:12:64. Average monthly temperature defined. The average monthly storage temperature is an arithmetic average calculated for each calendar month, or portion thereof if storage is for less than a month, from bulk liquid storage temperatures determined at least once every seven days.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (2.0) 34:10:12:65. Determination of true vapor pressure. The true vapor pressure shall be determined by the procedures in American Petroleum Institute Bulletin 2517. This procedure is dependent upon determination of the storage temperature and the Reid vapor pressure, which requires sampling of the petroleum liquids in the storage vessels. Unless the department requires in specific cases that the stored petroleum liquid be sampled, the true vapor pressure may be determined by using the average monthly storage temperature and the typical Reid vapor pressure. For those liquids for which certified specifications limiting the Reid vapor pressure exist, that Reid vapor pressure may be used. For other liquids, supporting analytical data must be made available on request by the department when typical Reid vapor pressure is used.

See Note 2 after 34:10:12:02.

General Authority: SDCL 34-16A-12. Law Implemented: 34-16A-19.

- (51.11) 34:10:12:66. Applicability and designation of secondary lead smelters. Sections 34:10:12:67 through 34:10:12:70 inclusive are applicable to the following secondary lead smelters: Pot furnaces of more than 250 kilograms (550 pounds) charging capacity, blast (cupola) furnaces, and reverberatory furnaces.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.4) 34:10:12:67. Standard for particulate matter for blast and reverberatory furnace. On and after the date on which the performance test required to be conducted by 34:10:12:06 (3) is completed, no owner or operator subject to 34:10:12:66 shall discharge or cause the discharge into the atmosphere from a blast (cupola) or reverberatory furnace any gases which:

- (1) Contain particulate matter in excess of fifty milligrams per dry standard cubic meter (0.022 grains per dry standard cubic foot; and
- (2) Exhibit twenty percent opacity or greater.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (50.1.2) 34:10:12:68. Opacity standards for pot furnace. On and after the date on which the performance test required to be conducted by 34:10:12:04 through 34:10:12:09 inclusive is completed, no owner or operator subject to 34:10:12:06 shall discharge or cause the discharge into the atmosphere from any pot furnace any gases which exhibit ten percent opacity or greater.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (2.0) 34:10:12:69. No violation for uncombined water. Where the presence of uncombined water is the only reason for failure to meet the requirements of 34:10:12:72 (2) and 34:10:12:73, such failure shall not be a violation.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.11) 34:10:12:70. Test methods and procedures for secondary lead smelters. The performance tests for determining emissions from secondary lead smelters and procedures under which secondary lead smelters and procedures under which performance testing shall be conducted shall be those stated in 40 CFR 60.123 and Appendix A, thereof.

General Authority: SDCL 34-16A-12. Law Implemented: 34-16A-19.

- (51.4) 34:10:12:71. Applicability and designation of secondary brass and bronze ingot production plants. Sections 34:10:12:77 through 34:10:12:80 are applicable to the following secondary brass or bronze ingot production plants; reverberatory and electric furnaces of one thousand kilograms (2,205 pounds) or greater production capacity and blast or cupola furnaces of 250 kilograms per hour (550 pounds per hour) or greater production capacity.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.5) 34:10:12:72. Standard for particulate matter for reverberatory furnace. On and after the date on which the performance test required to be conducted by 34:10:12:04 through 34:10:12:09, inclusive is completed, no owner or operator subject to 34:10:12:71 shall discharge or cause the discharge into the atmosphere from a reverberatory furnace any gases which:

- (1) Contain particulate matter in excess of fifty milligrams per dry standard cubic meter (0.022 grains per dry standard cubic foot); or

(2) Exhibit twenty percent opacity or greater.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (50.1.2) 34:10:12:73. Opacity standards for blast and electric furnaces. On and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:09 inclusive is completed, no owner or operator subject to 34:10:12:71 shall discharge or cause the discharge into the atmosphere from any blast (cupola) or electric furnace any gases which exhibit ten percent opacity or greater.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (2.0) 34:10:12:74. No violation for uncombined steam. Where the presence of uncombined water is the only reason for failure to meet the requirements of 34:10:12:72 (2) and 34:10:12:73 such failure shall not be a violation.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (9.0) 34:10:12:75. Test methods and procedures for secondary brass and bronze ingot production plants. The performance tests for determining emissions from secondary brass and bronze ingot production plants and procedures under which performance testing shall be conducted shall be those stated in 40 CFR 60.133 and Appendix A, thereof.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (51.4) 34:10:12:76. Applicability and designation of iron and steel plants. Sections 34:10:12:77 through 34:10:12:78 apply to each basic oxygen process furnace.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.4) 34:10:12:77. Standard for particulate matter for iron and steel plants. On and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:09, inclusive is completed, no owner or operator subject to 34:10:12:76 shall discharge or cause the discharge into the atmosphere from any affected facility any gases which contain particulate matter in excess of fifty milligrams per dry standard cubic meter (0.022 grains per dry standard cubic foot).

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (9.0) 34:10:12:78. Test methods and procedures for iron and steel plants. The performance tests for determining emissions from iron and steel plants and procedures under which performance testing shall be conducted shall be those stated in 40 CFR 60.144 and Appendix A, thereof.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (51.9) 34:10:12:79. Applicability and designation of sewage treatment plants. Sections 34:10:12:80 through 34:10:12:82 apply to each incinerator which burns the sludge produced by municipal sewage treatment facilities.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (51.5) 34:10:12:80. Standard for particulate matter for sewage treatment plants. On
(51.9) and after the date on which the performance test required to be conducted by 34:10:12:04 to 34:10:12:09 inclusive is completed, no owner or operator of any sewage sludge incinerator subject to 34:10:12:79 shall discharge or cause the discharge into the atmosphere of:

- (1) Particulate matter at a rate in excess of 0.65 grams per kilogram dry sludge input (1.30 pounds per ton dry sludge input);
- (2) Any gases which exhibit twenty percent opacity or greater. Where the presence of uncombined water is the only reason for failure to meet the requirements of this paragraph, such failure shall not be a violation of this subsection.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-24.

- (9.0) 34:10:12:81. Monitoring of operations for sewage treatment plants. The owner
(51.9) or operator of any sludge incinerator subject to 34:10:12:79 shall:

- (1) Install, calibrate, maintain, and operate a flow measuring device which can be used to determine either the mass or volume of sludge charged to the incinerator. The flow measuring device shall have an accuracy of plus or minus five percent over its operating range;
- (2) Provide access to the sludge charged so that a well mixed representative grab sample of the sludge can be obtained.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

- (9.0) 34:10:12:82. Test methods and procedures for sewage treatment plants. The
(51.9) performance tests for determining emissions from sewage treatment plants and procedures under which performance testing shall be conducted shall be those stated in 40 CFR 60.154 and Appendix A, thereof.

General Authority: SDCL 34-16A-12. Law Implemented: SDCL 34-16A-19.

We, the undersigned members of the board of environmental protection hereby adopt the attached rules which amend chapters 34:10:01, 34:10:02, 34:10:04, 34:10:05, 34:10:06, and hereby repeal existing chapters 34:10:08, 34:10:09, 34:10:10 and 34:10:11 of ARSD, and hereby adopt new rules, which are attached as chapter 34:10:12.

FEDERALLY PROMULGATED
REGULATIONS

64a

(10.0) 52.2176 Review of New or Modified Indirect Sources

(b) Regulation for Review of New or Modified Indirect Sources

(1) All terms used in this paragraph but not specifically defined below shall have the meaning given them in 52.01 of this chapter.

- (i) The term "indirect source" means a facility, building, structure, or installation which attracts or may attract mobile source activity that results in emissions of a pollutant for which there is a national standard. Such indirect sources include, but are not limited to:
 - (a) Highways and roads.
 - (b) Parking facilities.
 - (c) Retail, commercial and industrial facilities.
 - (d) Recreation, amusement, sports and entertainment facilities.
 - (e) Airports.
 - (f) Office and Government buildings.
 - (g) Apartment and condominium buildings.
 - (h) Education facilities.
- (ii) The term "Administrator" means the Administrator of the Environmental Protection Agency or his designated agent.
- (iii) The term "associated parking area" means a parking facility or facilities owned and/or operated in conjunction with an indirect source.
- (iv) The term "aircraft operation" means an aircraft take-off or landing.
- (v) The phrase "to commence construction" means to engage in a continuous program of on-site construction including site clearance, grading, dredging, or land filling specifically designed for an indirect source in preparation for the fabrication, erection, or installation of the building components of the indirect source. For the purpose of this paragraph, interruptions resulting from acts of God, strikes, litigation, or other matters beyond the control of the owner shall be disregarded in determining whether a construction or modification program is continuous.

- (vi) The phrase "to commence modification" means to engage in a continuous program of on-site modification, including site clearance, grading, dredging, or land filling in preparation for specific modification of the indirect source.
 - (vii) The term "highway section" means the development proposal of a highway of substantial length between logical termini (major crossroads, population centers, major traffic generators, or similar major highway control elements) as normally included in a single location study or multi-year highway improvement program as set forth in 23 CFR 770.201 (38 FR 31677).
 - (viii) The term "highway project" means all or a portion of a highway section which would result in a specific construction contract.
 - (ix) The term "Standard Metropolitan Statistical Area (SMSA)" means such areas as designated by the U.S. Bureau of the Budget in the following publication: "Standard Metropolitan Statistical Area," issued in 1967, with subsequent amendments.
- (2) The requirements of this paragraph are applicable to the following:
- (i) In an SMSA:
 - (a) Any new parking facility or other new indirect source with an associated parking area, which has a new parking capacity of 1,000 cars or more; or
 - (b) Any modified parking facility, or any modification of an associated parking area, which increases parking capacity by 500 cars or more; or
 - (c) Any new highway project with an anticipated average annual daily traffic volume of 20,000 or more vehicles per day within ten years of construction; or
 - (d) Any modified highway project which will increase average annual daily traffic volume by 10,000 or more vehicles per day within ten years after modification.
 - (ii) Outside an SMSA:
 - (a) Any new parking facility, or other new indirect source with an associated parking area, which has a parking capacity of 2,000 cars or more; or

- (b) Any modified parking facility, or any modification of an associated parking area, which increases parking capacity by 1,000 cars or more.
 - (iii) Any airport, the construction or general modification program of which is expected to result in the following activity within ten years of construction or modification:
 - (a) New airport: 50,000 or more operations per year by regularly scheduled air carriers, or use by 1,600,000 or more passengers per year.
 - (b) Modified airport: Increase of 50,000 or more operations per year by regularly scheduled air carriers over the existing volume of operations, or increase of 1,600,000 or more passengers per year.
 - (iv) Where an indirect source is constructed or modified in increments which individually are not subject to review under this paragraph, and which are not part of a program of construction or modification in planned incremental phases approved by the Administrator, all such increments commenced after December 31, 1974, or after the latest approval hereunder, whichever date is most recent, shall be added together for determining the applicability of this paragraph.
- (3) No owner or operator of an indirect source subject to this paragraph shall commence construction or modification of such source after December 31, 1974, without first obtaining approval from the Administrator. Application for approval to construct or modify shall be by means prescribed by the Administrator, and shall include a copy of any draft or final environmental impact statement which has been prepared pursuant to the National Environmental Policy Act (42 U.S.C. 4321). If not included in such environmental impact statement, the Administrator may request the following information:
- (i) For all indirect sources subject to this paragraph, other than highway projects:
 - (a) The name and address of the applicant.
 - (b) A map showing the location of the site of indirect source and the topography of the area.
 - (c) A description of the proposed use of the site, including the normal hours of operation of the facility, and the general types of activities to be operated therein.

- (d) A site plan showing the location of associated parking areas, points of motor vehicle ingress and egress to and from the site and its associated parking areas, and the location and height of buildings on the site.
- (e) An identification of the principal roads, highways, and intersections that will be used by motor vehicles moving to or from the indirect source.
- (f) An estimate, as of the first year after the date the indirect source will be substantially complete and operational, of the average daily traffic volumes, maximum traffic volumes for one-hour and eight-hour periods, and vehicle capacities of the principal roads, highways, and intersections identified pursuant to subdivision (i) (e) of this subparagraph located within one-fourth mile of all boundaries of the site.
- (g) Availability of existing and projected mass transit to service the site.
- (h) Where approval is sought for indirect sources to be constructed in incremental phases, the information required by this subparagraph (3) shall be submitted for each phase of the construction project.
- (i) Any additional information or documentation that the Administrator deems necessary to determine the air quality impact of the indirect source, including the submission of measured air quality data at the proposed site prior to construction or modification.

(11) For airports:

- (a) An estimate of the average number and maximum number of aircraft operations per day by type of aircraft during the first, fifth and tenth years after the date of expected completion.
- (b) A description of the commercial, industrial, residential and other development that the applicant expects will occur within three miles of the perimeter of the airport within the first five and the first ten years after the date of expected completion.
- (c) Expected passenger loadings at the airport.
- (d) The information required under subdivisions (i) (a) through (i) of this subparagraph.

(iii) For highway projects:

- (a) A description of the average and maximum traffic volumes for one, eight, and 24-hour time periods expected within 10 years of date of expected completion.
- (b) An estimate of vehicle speeds for average and maximum traffic volume conditions and the vehicle capacity of the highway project.
- (c) A map showing the location of the highway project, including the location of buildings along the right-of-way.
- (d) A description of the general features of the highway project and associated right-of-way, including the approximate height of buildings adjacent to the highway.
- (e) Any additional information or documentation that the Administrator deems necessary to determine the air quality impact of the indirect source, including the submission of measured air quality data at the proposed site prior to construction or modification.

(iv) For indirect sources other than airports and those highway projects subject to the provisions of paragraph (b) (6) (iii) of this section, the air quality monitoring requirements of paragraph (b) (3) (i) (i) of this section shall be limited to carbon monoxide, and shall be conducted for a period of not more than 14 days.

(4) (i) For indirect sources other than highway projects and airports, the Administrator shall not approve an application to construct or modify if he determines that the indirect source will:

- (a) Cause a violation of the control strategy of any applicable state implementation plan; or
- (b) Cause or exacerbate a violation of the national standards for carbon monoxide in any region or portion thereof.

(ii) The Administrator shall make the determination pursuant to paragraph (b) (4) (i) (b) of this section by evaluating the anticipated concentration of carbon monoxide at reasonable receptor or exposure sites which will be affected by the mobile source activity expected to be attracted by the indirect source. Such determination may be made by using traffic flow characteristic guidelines

published by the Environmental Protection Agency which relate traffic demand and capacity considerations to ambient carbon monoxide impact, by use of appropriate atmospheric diffusion models (examples of which are referenced in Appendix O to Part 51 of this chapter), and/or by any other reliable analytic method. The applicant may (but need not) submit with his application, the results of an appropriate diffusion model and/or any other reliable analytic method, along with the technical data and information supporting such results. Any such results and supporting data submitted by the applicant shall be considered by the Administrator in making his determination pursuant to paragraph (b) (4) (i) (b) of this section.

- (5) (i) For airports subject to this paragraph, the Administrator shall base his decision on the approval or disapproval of an application on the considerations to be published as an Appendix to this Part.
- (ii) For highway projects and parking facilities specified under paragraph (b) (2) of this section which are associated with airports, the requirements and procedures specified in paragraphs (b) (4) and (6) (i) and (ii) of this section shall be met.
- (6) (i) For all highway projects subject to this paragraph, the Administrator shall not approve an application to construct or modify if he determines that the indirect source will:
 - (a) Cause a violation of the control strategy of any applicable state implementation plan; or
 - (b) Cause or exacerbate a violation of the national standards for carbon monoxide in any region or portion thereof.
- (ii) The determination pursuant to paragraph (b) (6) (i) (b) of this section shall be made by evaluating the anticipated concentration of carbon monoxide at reasonable receptor or exposure sites which will be affected by the mobile source activity expected on the highway for the ten year period following the expected date of completion according to the procedures specified in paragraph (b) (4) (ii) of this section.
- (iii) For new highway projects subject to this paragraph with an anticipated average daily traffic volume of 50,000 or more vehicles within ten years of construction, or modifications to highway projects subject to this paragraph which will increase average daily traffic volume by 25,000

or more vehicles within ten years after modification, the Administrator's decision on the approval or disapproval of an application shall be based on the considerations to be published as an Appendix to this Part in addition to the requirements of paragraph (b) (6) (i) of this section.

- (7) The determination of the air quality impact of a proposed indirect source "at reasonable receptor or exposure sites", shall mean such locations where people might reasonably be exposed for time periods consistent with the national ambient air quality standards for the pollutants specified for analysis pursuant to this paragraph.
- (8) (i) Within 20 days after receipt of an application or addition thereto, the Administrator shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of paragraph (b) (8) (ii) of this section shall be the date on which all required information is received by the Administrator.
- (ii) Within 30 days after receipt of a complete application, the Administrator shall:
- (a) Make a preliminary determination whether the indirect source should be approved, approved with conditions in accordance with paragraphs (b) (9) or (10) of this section, or disapproved.
 - (b) Make available in at least one location in each region in which the proposed indirect source would be constructed, a copy of all materials submitted by the owner or operator, a copy of the Administrator's preliminary determination, and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and
 - (c) Notify the public, by prominent advertisement in a newspaper of general circulation in each region in which the proposed indirect source would be constructed, of the opportunity for written public comment on the information submitted by the owner or operator and the Administrator's preliminary determination on the approvability of the indirect source.
- (iii) A copy of the notice required pursuant to this subparagraph shall be sent to the applicant and to officials and agencies having cognizance over the location where the indirect source will be situated, as follows: State and local air pollution control agencies, the chief executive of the city and county; any comprehensive regional

land use planning agency; and for highways, any local board or committee charged with responsibility for activities in the conduct of the urban transportation planning process (3-C process) pursuant to 23 U.S.C. 134.

- (iv) Public comments submitted in writing within 30 days after the date such information is made available shall be considered by the Administrator in making his final decision on the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Administrator shall consider the applicant's response in making his final decision. All comments shall be made available for public inspection in at least one location in the region in which the indirect source would be located.
 - (v) The Administrator shall take final action on an application within 30 days after the close of the public comment period. The Administrator shall notify the applicant in writing of his approval, conditional approval, or denial of the application, and shall set forth his reasons for conditional approval or denial. Such notification shall be made available for public inspection in at least one location in the region in which the indirect source would be located.
 - (vi) The Administrator may extend each of the time periods specified in paragraphs (b) (8) (ii), (iv), or (v) of this section by no more than 30 days, or such other period as agreed to by the applicant and the Administrator.
- (9) (i) Whenever an indirect source as proposed by an owner or operator's application would not be permitted to be constructed for failure to meet the tests set forth pursuant to paragraphs (b) (4) (i), (b) (5) (i), or (b) (6) (i) and (iii) of this section, the Administrator may impose reasonable conditions on an approval related to the air quality aspects of the proposed indirect source so that such source, if constructed or modified in accordance with such conditions, could meet the tests set forth pursuant to paragraphs (b) (4) (i), (b) (5) (i), or (b) (6) (i) and (iii) of this section. Such conditions may include, but not be limited to:
- (a) Binding commitments to roadway improvements or additional mass transit facilities to serve the indirect source secured by the owner or operator from governmental agencies having jurisdiction thereof;
 - (b) Binding commitments by the owner or operator to specific programs for mass transit incentives for employees and patrons of the source; and

- (c) Binding commitments by the owner or operator to construct, modify, or operate the indirect source in such a manner as may be necessary to achieve the traffic flow characteristics published by the Environmental Protection Agency pursuant to paragraph (b) (4) (ii) of this section.
 - (ii) The Administrator may specify that any items of information provided in an application for approval related to the operation of an indirect source which may affect the source's air quality impact shall be considered permit conditions.
- (10) Notwithstanding the provisions relating to modified indirect sources contained in paragraph (b) (2) of this section, the Administrator may condition any approval by reducing the extent to which the indirect source may be further modified without resubmission for approval under this paragraph.
- (11) Any owner or operator who fails to construct an indirect source in accordance with the application as approved by the Administrator; any owner or operator who fails to construct and operate an indirect source in accordance with conditions imposed by the Administrator under paragraph (b) (9) of this section; any owner or operator who modifies an indirect source in violation of conditions imposed by the Administrator under paragraph (b) (10) of this section; or any owner or operator of an indirect source subject to this paragraph who commences construction or modification thereof after December 31, 1974, without applying for and receiving approval hereunder, shall be subject to the penalties specified under section 113 of the Act and shall be considered in violation of an emission standard or limitation under section 304 of the Act. Subsequent modification to an approved indirect source may be made without applying for permission pursuant to this paragraph only where such modification would not violate any condition imposed pursuant to paragraphs (b) (9) and (10) of this section and would not be subject to the modification criteria set forth in paragraph (b) (2) of this section.
- (12) Approval to construct or modify shall become invalid if construction or modification is not commenced within 24 months after receipt of such approval. The Administrator may extend such time period upon satisfactory showing that an extension is justified. The applicant may apply for such an extension at the time of initial application or at any time thereafter.
- (13) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with the control strategy and all local, State and Federal regulations which are part of the applicable State implementation plan.

- (14) Where the Administrator delegates the responsibility for implementing the procedures for conducting indirect source review pursuant to this paragraph to any agency, other than a regional office of the Environmental Protection Agency, the following provisions shall apply:
- (i) Where the agency designated is not an air pollution control agency, such agency shall consult the appropriate State or local air pollution control agency prior to making any determination required by paragraphs (b) (4), (5), or (6) of this section. Similarly, where the agency designated does not have continuing responsibilities for land use planning, such agency shall consult with the appropriate State or local land use and transportation planning agency prior to making any determination required by paragraph (b) (9) of this section.
 - (ii) The Administrator of the Environmental Protection Agency shall conduct the indirect source review pursuant to this paragraph for any indirect source owned or operated by the United States Government.
 - (iii) A copy of the notice required pursuant to paragraph (b) (8) (ii) (c) of this section shall be sent to the Administrator through the appropriate Regional Office.
- (15) In any area in which a "management of parking supply" regulation which has been promulgated by the Administrator is in effect, indirect sources which are subject to review under the terms of such a regulation shall not be required to seek review under this paragraph but instead shall be required to seek review pursuant to such management of parking supply regulation. For purposes of this paragraph, a "management of parking supply" regulation shall be any regulation promulgated by the Administrator as part of a transportation control plan pursuant to the Clean Air Act which requires that any new or modified facility containing a given number of parking spaces shall receive a permit or other prior approval, issuance of which is to be conditioned on air quality considerations.
- (16) Notwithstanding any of the foregoing provisions to the contrary, the operation of this paragraph is hereby suspended pending further notice. No facility which commences construction prior to the expiration of the sixth month after the operation of this paragraph is reinstated (as to that type of facility) shall be subject to this paragraph.

(37 FR 10846, May 31, 1972 as amended at 40 FR 28065, July 3, 1975; 40 FR 40160, Sept. 2, 1975)

(17.0) 52.2178 Prevention of Significant Deterioration

(b) Definitions. For the purposes of this section:

- (1) "Facility" means an identifiable piece of process equipment. A stationary source is composed of one or more pollutant-emitting facilities.
- (2) The phrase "Administrator" means the Administrator of the Environmental Protection Agency or his designated representative.
- (3) The phrase "Federal Land Manager" means the head, or his designated representative, of any Department or Agency of the Federal Government which administers federally-owned land, including public domain lands.
- (4) The phrase "Indian Reservation" means any federally-recognized reservation established by Treaty, Agreement, Executive Order, or Act of Congress.
- (5) The phrase "Indian Governing Body" means the governing body of any tribe, band, or group of Indians subject to the jurisdiction of the United States and recognized by the United States as possessing power of self-government.
- (6) "Construction" means fabrication, erection or installation of a stationary source.
- (7) "Commenced" means that an owner or operator has undertaken a continuous program of construction or modification or that an owner or operator has entered into a contractual obligation to undertake and complete, within a reasonable time, a continuous program of construction or modification.

(c) Area designation and deterioration increment

- (1) The provisions of this paragraph have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part. Where this paragraph is so incorporated, the provisions shall also be applicable to all lands owned by the Federal Government and Indian Reservations located in such State. The provisions of this paragraph do not apply in those counties or other functionally equivalent areas that pervasively exceeded any national ambient air quality standards during 1974 for sulfur dioxide or particulate matter and then only with respect to such pollutants. States may notify the Administrator at any time of those areas which exceeded the national standards during 1974 and therefore are exempt from the requirements of this paragraph.

- (2) (i) For purposes of this paragraph, areas designated as Class I or II shall be limited to the following increases in pollutant concentration occurring since January 1, 1975:

Area Designations		
Pollutant	Class I (ug/m ³)	Class II (ug/m ³)
Particulate matter:		
Annual geometric mean	5	10
24-hr maximum	10	30
Sulfur dioxide:		
Annual arithmetic mean	2	15
24-hr maximum	5	100
3-hr maximum	25	700

- (ii) For purposes of this paragraph, areas designated as Class III shall be limited to concentrations of particulate matter and sulfur dioxide no greater than the national ambient air quality standards.
- (iii) The air quality impact of sources granted approval to construct or modify prior to January 1, 1975 (pursuant to the approved new source review procedures in the plan) but not yet operating prior to January 1, 1975, shall not be counted against the air quality increments specified in paragraph (c) (2) (i) of this section.
- (3) (i) All areas are designated Class II as of the effective date of this paragraph. Redesignation may be proposed by the respective States, Federal Land Manager, or Indian Governing Bodies, as provided below, subject to approval by the Administrator.
- (ii) The State may submit to the Administrator a proposal to redesignate areas of the State Class I, Class II, or Class III, provided that:
- At least one public hearing is held in or near the area affected and this public hearing is held in accordance with procedures established in 51.4 of this chapter, and
 - Other States, Indian Governing Bodies, and Federal Land Managers whose lands may be affected by the proposed redesignation are notified at least 30 days prior to the public hearing, and

- (c) A discussion of the reasons for the proposed redesignation is available for public inspection at least 30 days prior to the hearing and the notice announcing the hearing contains appropriate notification of the availability of such discussion, and
 - (d) The proposed redesignation is based on the record of the State's hearing, which must reflect the basis for the proposed redesignation, including consideration of (1) growth anticipated in the area, (2) the social, environmental, and economic effects of such redesignation upon the area being proposed for redesignation and upon other areas and States, and (3) any impacts of such proposed redesignation upon regional or national interests.
 - (e) The redesignation is proposed after consultation with the elected leadership of local and other sub-state general purpose governments in the area covered by the proposed redesignation.
- (iii) Except as provided in paragraph (c) (3) (iv) of this section, a State in which lands owned by the Federal Government are located may submit to the Administrator a proposal to redesignate such lands Class I, Class II, or Class III in accordance with subdivision (ii) of this subparagraph provided that:
- (a) The redesignation is consistent with adjacent State and privately owned land, and
 - (b) Such redesignation is proposed after consultation with the Federal Land Manager.
- (iv) Notwithstanding subdivision (iii) of this subparagraph, the Federal Land Manager may submit to the Administrator a proposal to redesignate any Federal lands to a more restrictive designation than would otherwise be applicable provided that:
- (a) The Federal Land Manager follows procedures equivalent to those required of States under paragraph (c) (3) (ii) and,
 - (b) Such redesignation is proposed after consultation with the State(s) in which the Federal Land is located or which border the Federal Land.
- (v) Nothing in this section is intended to convey authority to the States over Indian Reservations where States have not assumed such authority under other laws nor is it intended to deny jurisdiction which States have assumed

under other laws. Where a State has not assumed jurisdiction over an Indian Reservation the appropriate Indian Governing Body may submit to the Administrator a proposal to redesignate areas Class I, Class II, or Class III, provided that:

- (a) The Indian Governing Body follows procedures equivalent to those required of States under paragraph (c) (3) (ii) and,
 - (b) Such redesignation is proposed after consultation with the State(s) in which the Indian Reservation is located or which border the Indian Reservation and, for those lands held in trust, with the approval of the Secretary of the Interior.
- (vi) The Administrator shall approve, within 90 days, any redesignation proposed pursuant to this subparagraph as follows:
- (a) Any redesignation proposed pursuant to subdivisions (ii) and (iii) of this subparagraph shall be approved unless the Administrator determines (1) that the requirements of subdivisions (ii) and (iii) of this subparagraph have not been complied with, (2) that the State has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3) (ii) (d) of this paragraph, or (3) that the State has not requested and received delegation of responsibility for carrying out the new source review requirements of paragraphs (d) and (e) of this section.
 - (b) Any redesignation proposed pursuant to subdivision (iv) of this subparagraph shall be approved unless he determines (1) that the requirements of subdivision (iv) of this subparagraph have not been complied with, or (2) that the Federal Land Manager has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3) (ii) (d) of this paragraph.
 - (c) Any redesignation submitted pursuant to subdivision (v) of this subparagraph shall be approved unless he determines (1) that the requirements of subdivision (v) of this subparagraph have not been complied with, or (2) that the Indian Governing Body has arbitrarily and capriciously disregarded relevant considerations set forth in subparagraph (3) (ii) (d) of this paragraph.

- (d) Any redesignation proposed pursuant to this paragraph shall be approved only after the Administrator has solicited written comments from affected Federal agencies and Indian Governing Bodies and from the public on the proposal.
- (e) Any proposed redesignation protested to the proposing State, Indian Governing Body, or Federal Land Manager and to the Administrator by another State or Indian Governing Body because of the effects upon such protesting State or Indian Reservation shall be approved by the Administrator only if he determines that in his judgment the redesignation appropriately balances considerations of growth anticipated in the area proposed to be redesignated; the social, environmental and economic effects of such redesignation upon the area being redesignated and upon other areas and States; and any impacts upon regional or national interests.
- (f) The requirements of paragraph (c) (3) (vi) (a) (3) that a State request and receive delegation of the new source review requirements of this section as a condition to approval of a proposed redesignation, shall include as a minimum receiving the administrative and technical functions of the new source review. The Administrator will carry out any required enforcement action in cases where the State does not have adequate legal authority to initiate such actions. The Administrator may waive the requirements of paragraph (c) (3) (vi) (a) (3) if the State Attorney-General has determined that the State cannot accept delegation of the administrative/technical functions.
- (vii) If the Administrator disapproves any proposed area designation under this subparagraph, the State, Federal Land Manager or Indian Governing Body, as appropriate, may re-submit the proposal after correcting the deficiencies noted by the Administrator or reconsidering any area designation determined by the Administrator to be arbitrary and capricious.

(d) Review of new sources

- (1) The provisions of this paragraph have been incorporated by reference into the applicable implementation plans for various States, as provided in Subparts B through DDD of this part. Where this paragraph is so incorporated, the requirements of this paragraph apply to any new or modified stationary source of the type identified below which has not commenced construction or modification prior to June 1, 1975 except as specifically provided below. A

source which is modified, but does not increase the amount of sulfur oxides or particulate matter emitted, or is modified to utilize an alternative fuel, or higher sulfur content fuel, shall not be subject to this paragraph.

- (i) Fossil-Fuel Steam Electric Plants of more than 1000 million B.T.U. per hour heat input.
 - (ii) Coal Cleaning Plants.
 - (iii) Kraft Pulp Mills.
 - (iv) Portland Cement Plants.
 - (v) Primary Zinc Smelters.
 - (vi) Iron and Steel Mills.
 - (vii) Primary Aluminum Ore Reduction Plants.
 - (viii) Primary Copper Smelters.
 - (ix) Municipal Incinerators capable of charging more than 250 tons of refuse per 24 hour day.
 - (x) Sulfuric Acid Plants.
 - (xi) Petroleum Refineries.
 - (xii) Lime Plants.
 - (xiii) Phosphate Rock Processing Plants.
 - (xiv) By-Product Coke Oven Batteries.
 - (xv) Sulfur Recovery Plants.
 - (xvi) Carbon Black Plants (furnace process).
 - (xvii) Primary Lead Smelters.
 - (xviii) Fuel Conversion Plants.
 - (xix) Ferroalloy production facilities commencing construction after October 5, 1975.
- (2) No owner or operator shall commence construction or modification of a source subject to this paragraph unless the Administrator determines that, on the basis of information submitted pursuant to subparagraph (3) of this paragraph:

- (i) The effect on air quality concentration of the source or modified source, in conjunction with the effects of growth and reduction in emissions after January 1, 1975, of other sources in the area affected by the proposed source, will not violate the air quality increments applicable in the area where the source will be located nor the air quality increments applicable in any other areas. The analysis of emissions growth and reduction after January 1, 1975, of other sources in the areas affected by the proposed source shall include all new and modified sources granted approval to construct pursuant to this paragraph; reduction in emissions from existing sources which contributed to air quality during all or part of 1974; and general commercial, residential, industrial, and other sources of emissions growth not exempted by paragraph (c) (2) (iii) of this section which has occurred since January 1, 1975.
- (ii) The new or modified source will meet an emission limit, to be specified by the Administrator as a condition to approval, which represents that level of emission reduction which would be achieved by the application of best available control technology, as defined in 52.01 (f), for particulate matter and sulfur dioxide. If the Administrator determines that technological or economic limitations on the application of measurement methodology to a particular class of sources would make the imposition of an emission standard infeasible, he may instead prescribe a design or equipment standard requiring the application of best available control technology. Such standard shall to the degree possible set forth the emission reductions achievable by implementation of such design or equipment, and shall provide for compliance by means which achieve equivalent results.
- (iii) With respect to modified sources, the requirements of subparagraph (2) (ii) of this paragraph shall be applicable only to the facility or facilities from which emissions are increased.
- (3) In making the determinations required by paragraph (d) (2) of this section, the Administrator shall, as a minimum, require the owner or operator of the source subject to this paragraph to submit: site information, plans, description, specifications, and drawings showing the design of the source; information necessary to determine the impact that the construction or modification will have on sulfur dioxide and particulate matter air quality levels; and any other information necessary to determine that best available control technology will be applied. Upon request of the Administrator, the owner or operator of the source shall provide information on the nature and extent of general commercial, residential, industrial, and other growth which has occurred in the area affected by the source's emissions (such area to be specified by the

Administrator) since January 1, 1975.

- (4) (i) Where a new or modified source is located on Federal Lands, such source shall be subject to the procedures set forth in paragraphs (d) and (e) of this section. Such procedures shall be in addition to applicable procedures conducted by the Federal Land Manager for administration and protection of the affected Federal Lands. Where feasible, the Administrator will coordinate his review and hearings with the Federal Land Manager to avoid duplicate administrative procedures.
 - (ii) New or modified sources which are located on Indian Reservations shall be subject to procedures set forth in paragraphs (d) and (e) of this section. Such procedures shall be administered by the Administrator in cooperation with the Secretary of the Interior with respect to lands over which the State has not assumed jurisdiction under other laws.
 - (iii) Whenever any new or modified source is subject to action by a Federal Agency which might necessitate preparation of an environmental impact statement pursuant to the National Environmental Policy Act (42 U.S.C. 4321), review by the Administrator conducted pursuant to this paragraph shall be coordinated with the broad environmental reviews under that Act, to the maximum extent feasible and reasonable.
- (5) Where an owner or operator has applied for permission to construct or modify pursuant to this paragraph and the proposed source would be located in an area which has been proposed for redesignation to a more stringent class (or the State, Indian Governing Body, or Federal Land Manager has announced such consideration), approval shall not be granted until the Administrator has acted on the proposed redesignation.
- (e) Procedures for public participation
- (1) (i) Within 20 days after receipt of an application to construct, or any addition to such application, the Administrator shall advise the owner or operator of any deficiency in the information submitted in support of the application. In the event of such a deficiency, the date of receipt of the application for the purpose of paragraph (e) (1) (ii) of this section shall be the date on which all required information is received by the Administrator.
 - (ii) Within 30 days after receipt of a complete application, the Administrator shall:

- (a) Make a preliminary determination whether the source should be approved, approved with conditions, or disapproved.
 - (b) Make available in at least one location in each region in which the proposed source would be constructed, a copy of all materials submitted by the owner or operator, a copy of the Administrator's preliminary determination and a copy or summary of other materials, if any, considered by the Administrator in making his preliminary determination; and
 - (c) Notify the public, by prominent advertisement in newspaper of general circulation in each region in which the proposed source would be constructed, of the opportunity for written public comment on the information submitted by the owner or operator and the Administrator's preliminary determination on the approvability of the source.
- (iii) A copy of the notice required pursuant to this subparagraph shall be sent to the applicant and to officials and agencies having cognizance over the locations where the source will be situated as follows: State and local air pollution control agencies, the chief executive of the city and county; any comprehensive regional land use planning agency; and any State, Federal Land Manager or Indian Governing Body whose lands will be significantly affected by the source's emissions.
- (iv) Public comments submitted in writing within 30 days after the date such information is made available shall be considered by the Administrator in making his final decision on the application. No later than 10 days after the close of the public comment period, the applicant may submit a written response to any comments submitted by the public. The Administrator shall consider the applicant's response in making his final decision. All comments shall be made available for public inspection in at least one location in the region in which the source would be located.
- (v) The Administrator shall take final action on an application within 30 days after the close of the public comment period. The Administrator shall notify the applicant in writing of his approval, conditional approval, or denial of the application, and shall set forth his reasons for conditional approval or denial. Such notification shall be made available for public inspection in at least one location in the region in which the source would be located.

- (vi) The Administrator may extend each of the time periods specified in paragraph (e) (1) (ii), (iv), or (v) of this section by no more than 30 days or such other period as agreed to by the applicant and the Administrator.
- (2) Any owner or operator who constructs, modifies, or operates a stationary source not in accordance with the application, as approved and conditioned by the Administrator, or any owner or operator of a stationary source subject to this paragraph who commences construction or modification after June 1, 1975, without applying for and receiving approval hereunder, shall be subject to enforcement action under section 113 of the Act.
- (3) Approval to construct or modify shall become invalid if construction or expansion is not commenced within 18 months after receipt of such approval or if construction is discontinued for a period of 18 months or more. The Administrator may extend such time period upon a satisfactory showing that an extension is justified.
- (4) Approval to construct or modify shall not relieve any owner or operator of the responsibility to comply with the control strategy and all local, State, and Federal regulations which are part of the applicable State Implementation Plan.
- (f) Delegation of authority
 - (1) The Administrator shall have the authority to delegate responsibility for implementing the procedures for conducting source review pursuant to paragraphs (d) and (e), in accordance with subparagraphs (2), (3), and (4) of this paragraph.
 - (2) Where the Administrator delegates the responsibility for implementing the procedures for conducting source review pursuant to this section to any Agency, other than a regional office of the Environmental Protection Agency, the following provisions shall apply:
 - (i) Where the agency designated is not an air pollution control agency, such agency shall consult with the appropriate State and local air pollution control agency prior to making any determination required by paragraph (d) of this section. Similarly, where the agency designated does not have continuing responsibilities for managing land use, such agency shall consult with the appropriate State and local agency which is primarily responsible for managing land use prior to making any determination required by paragraph (d) of this section.
 - (ii) A copy of the notice pursuant to paragraph (e) (1) (ii) (c) of this section shall be sent to the Administrator through the appropriate regional office.

- (3) In accordance with Executive Order 11752, the Administrator's authority for implementing the procedures for conducting source review pursuant to this section shall not be delegated, other than to a regional office of the Environmental Protection Agency, for new or modified sources which are owned or operated by the Federal government or for new or modified sources located on Federal lands; except that, with respect to the latter category, where new or modified sources are constructed or operated on Federal lands pursuant to leasing or other Federal agreements, the Federal land Manager may at his discretion, to the extent permissible under applicable statutes and regulations, require the lessee or permittee to be subject to a designated State or local agency's procedures developed pursuant to paragraphs (d) and (e) of this section.
- (4) The Administrator's authority for implementing the procedures for conducting source review pursuant to this section shall not be re-delegated, other than to a regional office of the Environmental Protection Agency, for new or modified sources which are located on Indian reservations except where the State has assumed jurisdiction over such land under other laws, in which case the Administrator may delegate his authority to the States in accordance with subparagraphs (2), (3), and (4) of this paragraph.

(39 FR 42514, Dec. 5, 1974; 40 FR 2802, Jan. 16, 1975, as amended at 40 FR 24535, June 9, 1975; 40 FR 25005, June 12, 1975; 40 FR 42012, Sept. 10, 1975)